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TRIAL
OF
ALEXANDER M'LEOD,
FOR THE
MURDER
OF
AMOS DURFEE;
AND AS AN ACCOMPLICE IN THE
BURNING
OF THE
STEAMER CAROLINE,
IN THE
NIAGARA RIVER,
DURING THE
Canadian Rebellion in 1837-8.

NEW YORK:
PUBLISHED AT THE SUN OFFICE.
1841.

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TRIAL

ALEXANDER MURDER

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Canadian Rebellion in 1837

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TRIAL OF ALEXANDER M'LEOD, FOR THE MURDER OF AMOS DUFFEE.

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ONEIDA CO INTY.

MONDAY, Oct. 4, 1 41.

TRIAL OF ALEXANDER McLEOD FOR
THE MURDER OF DUFFEE,

At half past 9 o'clock, his Honor, Judge Gridley took his seat on the Bench, together with Judges White, Kimball and Jones of the County Court.

On behalf of the prosecution appeared W. G. Hall, Esq, Attorney General, Timothy Jenkins, Esq, District Attorney of this county, the District Attorney of Niagara county, J. L. Wood, Esq and Seth L. Hawley, Esq of Buffalo.

On the part of the prisoner appeared Joshua C. Spencer, Esq, and C. Gardner, and Alvin C. Bradley, Esqs, of Lockport.

After the court, bar and jurors had taken their seats, the public generally were admitted to the extent of the capacity of the room (which is greater than that of any court room in your city) and in doing which a remarkable degree of regularity and order were preserved. Judge White briefly stated to the auditory the necessity of strictly preserving order and silence, and no disposition was manifested by the audience to disobey.

The Crier then opened the Circuit Court and Court of Oyer and Terminer for Oneida County; and by direction of Mr. Hall, Attorney General, called the name of Theodore Stone, a witness for the prosecution, who not answering, Mr. Hall moved for an attachment against him, which was forthwith issued.

The prisoner, McLeod, was then brought in, and placed by the side of his counsel. His appearance indicated a man who had lived well, and felt much at ease.

Mr. Hall then called on the trial of McLeod, and the counsel for the prisoner expressing their readiness to proceed, the prisoner was arraigned and informed of his right of challenge. The clerk then proceeded to call the jury. The first juror called was Charles O. Curtis, of the town of Paris, and he not being challenged by the prisoner's counsel, Mr. Hall asked him several questions, as follows:—

Mr. Hall—Have you formed or expressed any opinion as to the guilt or innocence of the prisoner?

Witness—I have not.

Mr. Hall—Have you any conscientious scruples to finding a verdict in a case involving life and death?

Witness—I have not.

Mr. Hall then proceeded to ask the juror a question relative to his views of the public policy involved in the case; to which the witness readily answered that his only view and wish was that justice should be done between the prisoner and the people—nothing more.

Judge Gridley, however, deemed the question altogether beyond the pale of necessity or of regularity in the challenging of jurors; and Mr. Hall withdrew it. Mr. Curtis was then sworn as a juror, and took his seat.

Edmund Allen, of Augusta, was next called—the two first interrogatories above stated were propounded to him by Mr. Hall; he answered both in the negative, and was sworn.

John Mott, of Sangerfield, (a leading man in the county, very intelligent and influential) was next called, questioned as to his freedom of bias, &c., and was sworn.

Joseph Cauldwell, of Whitestown, was next called, but owing to conscientious scruples against the taking of human life under the law, he was directed by the court to stand aside.

Ashley Hill, of Kirkland, was next called, but was peremptorily challenged by the prisoner's counsel.

Elisha Brush, of Rome, was next called, questioned by Mr. Hall, and sworn.

Royal Robbins, of Marcy called and challenged peremptorily by prisoner's counsel.

Rosevelt T. Eastman, of Paris, excused on account of illness.

Ira Byington, of Camden, interrogated and sworn.

Wm. Carpenter, of Whitestown, the same.

Edward Scovel, of Paris, was next called, but voluntarily stated that he doubted the public policy of convicting the prisoner.

Judge Gridley replied that that did not excuse, for the objection did not come within the rule, but the juror might stand aside for the present.

Luther Shipard, of Verona, called, and peremptorily challenged by prisoner's counsel.

Isaiah Thurber, of Utica, called, interrogated, and answered in the negative.

Mr. Hall asked the court to allow the juror to stand aside for the present, and not swear him till the panel had been exhausted. He did not ask this on account of any objection to the replies of the juror, but he claimed it as a right of the prosecution to proceed through the panel before the completion of the jury.

Mr. Spencer objected to any such proceeding. He had never heard any such right claimed for the prosecution. It would give the prosecution

an undue advantage over the defendant, inasmuch as it would virtually give the prosecution the benefit of thirty-six peremptory challenges, while the defence would be limited to twenty.—He (Mr. Spencer) had been in active practice in the courts of this state, but had never before heard of any such right on the part of the prosecution as that claimed by the learned District Attorney.

Mr. Hall, in support of the right he claimed, quoted from Chitty a decision of Judge Baldwin, in Pennsylvania, admitting the right under the English common law—though Judge Baldwin admitted that he had never known its previous practice in the United States.

An argument of considerable length ensued; and Judge Gridley decided against such a right on the part of the prosecution; and he ordered Mr. Thurber to be sworn, which was done.

Henry Addington of Paris, excused on account of religious scruples.

Peter Sleight, of Westmoreland, sworn.

Henry Hayter, of Kirkland, peremptorily challenged by prisoner's counsel.

David Tuttle, of Boonville, the same.

Asher Allen, of Augusta, accepted and sworn.

Seymour Carrier, of Steuben, the same.

Thomas Noonan, of Annsville, peremptorily challenged by prisoner's counsel.

Joseph Davis, of Remsen, the same.

Joseph Seymour, of Western, the same.

Ezek Allen, of Floyd, accepted and sworn.

Stephen Northrup, of Marcy, excused on account of ill health.

Levi Yale, of Augusta, peremptorily challenged by prisoner's counsel.

Volney Elliott, of Kirkland, accepted and sworn.

This completed the jury, which, as sworn, was constituted as follows—

Charles O. Curtis, of Paris.

Edmund Allen, of Augusta.

John Mott, of Sangerfield.

Elisha Brush, of Rome.

Ira Byington, of Camden.

Wm. Carpenter, of Kirkland.

Isaiah Thurber, of Utica.

Peter Sleight, of Westmoreland.

Asher Allen, of Augusta.

Seymour Carrier, of Steuben.

Ezek Allen, of Floyd.

Volney Elliott, of Kirkland.

The residue of the petit jurors were discharged till 8 o'clock on Friday night.

Mr. Hall, attorney general, then proceeded to open the case for the prosecution. He commenced by expressing briefly but feelingly the delicacy of his situation and the duty which had now devolved upon him and the jury. He next reverted to the great excitement which pervaded the public mind from one extremity of the Union to the other, in relation to the important trial upon which they had now entered, and the evidence of which was before the eyes of the jury, in the living masses which thronged and surrounded the court house. To this excitement it was the duty of the jury and himself to close their eyes, to know it not, and to eschew its influence. Their duty was plain. It was to elicit the truth, to be governed by truth alone, and to keep their minds and their judgments free from all extraneous influences, prejudices or fears. Truth was his only pursuit; and if from innate weakness he fell short of the full performance of his duty, he prayed the jury to redouble their own vigilance, and

elicit truth through the channels presented to them, in all cases in which he might be deemed remiss.

Mr. Hall then read to the jury the greater part of the indictment found against the prisoner, at the Niagara circuit for the shooting and killing of Amos Durfee, on the 30th December, 1837. There were a great number of counts in the indictment, some charging the murder to have been done with a gun—some with a pistol—some charged the murder upon the prisoner, and others upon sundry other individuals, named and unknown, the prisoner being present and aiding and assisting therein. In these several counts was included every species of murder or killing known to the statute; and these Mr. Hall briefly glanced over to the jury.

To sustain this indictment, Mr. Hall stated, it would be proved before the jury that on or about the 28th December, 1837, the steamboat *Caroline*, a boat of some 30 or 40 tons burden, left Buffalo for Schlosser. The boat was manned by citizens of the United States, was duly enrolled at the Custom House, and was licensed to run between Buffalo and Schlosser.

At that time a band of Canadian insurgents, three or four hundred in number, had taken possession of Navy Island, and held it in the name of the British government. A great effort was also making, at the same time, to enlist the feelings of our citizens, on this side of the line, in behalf of the suffering people who had been driven by their hardships and sufferings; and the various persons who had been thrust from their houses and homes in the midst of a Siberian winter, found no difficulty in enlisting among a portion of our citizens, especially among the young, the sympathy their deplorable situation naturally drew forth.

But with the band on Navy Island the *Caroline* had no connection, and it would be made to appear before the jury that she was not at all in their employ.

Mr. Hall was proceeding to explain to the jury well known circumstances which preceded the destruction of the *Caroline*; and the various circumstances attending the same, when we were obliged to despatch our Express, at a quarter to one o'clock P. M.

MORNING SESSION—Continued.

In his recapitulation of some of the border scenes of the times preceding the destruction of the *Caroline*, and of that outrage, Mr. Hall displayed an intimate knowledge of the progress of those events, and drew vivid and eloquent pictures of the sufferings of inhabitants on both sides of the line, among those who stood aloof from the raging quarrel, as well as those who were immediately involved in it, and of the outrages, massacres, burnings and destruction of property which accompanied it.

Mr. Hall then reverted to the manner of the origin of this case, and the well known history of its progress from court to court, up to its presentation here for the decision of a petit jury of Oneida county. In this recapitulation Mr. Hall introduced the decision of the Supreme Court upon the motion for the discharge of McLeod, argued in New York last summer. When he had proceeded about half through this decision, the court at 1 o'clock adjourned for half an hour to dine.

AFTERNOON SESSION.

At half past 2 P. M. the Court had come together, and order been restored; and Mr. Hall resumed the reading of the decision of the Supreme

Court. Upon mention of the judgment passed upon by the killing of the laws of the law of this court any previous and that it is to those tribunals.

He also vindicated the imputation in arms against was in no way and wholly in instructions of

The law passed disposed of by was left for the sent in the ty or innocent Durfee. To be compared to prove ne was present and the murder vy Island and those events; ing people to Carolina; that what time the alter the out sword, stained boasted, was —or words to corroborating circum-

Mr. Hall then relating to murder to bring the p law, upon the dering their v

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Court. Upon concluding, Mr. Hall called the attention of the jury to so much of the case as was passed upon by the Supreme Court decision—that the killing of Durfee was not committed under the laws of war, but came wholly under the civil law of this country; that it was not the result of any previous order of the British government; and that it is to the tribunals of this country, and to those tribunals alone, his murderer was responsible.

He also vindicated the murdered Durfee from the imputation of having been an insurgent, and in arms against Canada. Durfee, he would show, was in no way connected with the insurgents, and wholly innocent of any participation in the insurrections of that day.

The law points, Mr. Hall continued, had been disposed of by the Supreme Court, and all that was left for this jury to pass upon was that presented in the indictment—was the prisoner guilty or innocent of participation in the murder of Durfee. To sustain the indictment, he was prepared to prove the assertions of the prisoner that he was present at the destruction of the Caroline and the murder of Durfee; that he was about Navy Island and Schlosser immediately preceding those events; that he was busily engaged enlisting people to go upon the expedition against the Caroline; that he was at Schlosser inquiring at what time the Caroline would be there; and that, after the outrage, he exhibited a pistol and a sword, stained with blood—which blood, he boasted, was "the blood of a damned Yankee"—or words to that effect—together with other corroborating circumstances.

Mr. Hall then explained to the jury the laws relating to murder; and if they deemed the testimony to bring the prisoner within the purview of that law, upon their oaths imposed, the duty of rendering their verdict accordingly.

In conclusion, Mr. Hall again urged upon the jury a full and unbiased performance of the duty devolving upon them, impressing upon them the importance to the prisoner and to the country, as proceeded to call his witnesses.

THE TESTIMONY.

William Wells, who was sworn and interrogated by Mr. Wood.

Mr. W.—Mr. Wells, where do you reside?

Witness.—In Buffalo.

Mr. W.—How long have you resided there?

Witness.—I was born there and have always lived there pretty much.

Mr. W.—Was you the owner of a steamboat in the year 1837?

Witness.—I was. It was the Caroline. In December she was lying in the canal at Buffalo, and I fitted her up, and ran her to Schlosser. On the 29th December I ran her to Schlosser, arrived there about 6 in the evening, and made her fast with a chain cable to a pile at the end of the dock. As soon as we got our supper, we set our watch and went to bed. On board of steamboat or vessel, it is usual to set a watch over night. Our watch on that night was set about 9 o'clock. Sylvanus Saring was one of the watch that night. I do not recollect the others. About 12 o'clock I was awoke by some of the hands, who had come to Niagara Falls, came back and finding their berths occupied by strangers, they called me up, and I directed the strangers to get up and give my hands their berths. While on deck one of the hands told me he saw a boat approaching. I told him to look after it and see who was in it, but allow no one to come on board. I then went

to the cabin and got in bed again, but presently the watch came down and told me there were four or five boats, filled with armed men; and before I could get my clothes on I heard people on the deck, making a great noise, and also heard the report of several guns or pistols on deck. I heard a good deal of hallooing, but could not distinguish what was said. I concluded that the people who had come on board wanted to get possession of the boat; and knowing I could not resist them I dressed myself fully, secured my papers and made for the companion way. Before I got to the stairs which would take me on deck, I heard orders given to "give no quarters," to "kill the damned Yankees," or words to that effect. I then became alarmed, and asked Capt. Appleby, who was with me, what we should do? He replied we must do the best we can.

Capt. Appleby was in advance of me, and had just put his foot on deck; he was seized by the collar by some person, who told him not to go out there, or they would kill him. As he stepped back there appeared to be two parties of men, one coming from the bow of the boat and the other from the stern. They met by the cabin door, which they closed, and I heard swords clashing and firing. Capt. Appleby and myself then returned into the cabin; I turned round the machinery to the forward part of the boat, to make my escape from the forward hatchway by a plank communicating with the deck; while I stood near the hatch, watching my chance to get out, a man put his hand upon the hatchway, and sprang down into the fire-room without touching the plank; he immediately caught hold of the poker, and commenced working at the fire, as I supposed for the purpose of getting up steam and taking the boat off. I stood there, not daring to make a noise, till he got busily engaged; when I crawled back into the cabin without his hearing me, to escape through the cabin door; when I put my head out of the cabin door, my hat brushed the calf of the leg of a man who was standing there, and thinking he felt it, I sprang below again; the cabin door at the top of the stairs was open at the time; I again went forward, and in doing so I met some one, who ran against me; I supposed him to be one of the attacking party.

We spoke, and each passed on. When I got to the fire room, and watching my chance to escape, the men who first entered still sat there. He soon rose, seized some one who had secreted himself there, hauled him out to the light, and in rough language asked him who he was and what he was doing there. I then saw it was Amos Durfee whom he had seized. Durfee replied that he belonged to the boat. I did not then know his name was Durfee, but only knew him as a stage driver. The other then used very opprobrious language to him, and keeping hold of him, ordered him to follow him on deck or he would blow his brains out. They both went upon deck.

My intention at first was to go up and surrender, but from the treatment I saw Durfee receive, I concluded I had better not do so. I observed that the port hole on the starboard side of the boat used for throwing fire out, was open. It was 8 or 10 inches square, and I thought I could make my escape out of it; but I soon became satisfied I could not. I tried, but did not succeed. It would not have been safe for me had I succeeded, for there was a man right under it. I then went into the after cabin and threw off my overcoat, with the purpose of swimming. I returned to the hole, looked out, and saw close by

a yawl boat with men in it armed with boarding pikes, &c. They appeared to have just thrown the painter on board the steamboat, and made it fast; and their boat was swimming round with the current. I saw there was no chance of escape then, and returned to the after cabin, and had got one of the windows nearly out, when I discovered two yawl boats made fast to the stern of the steamboat, with a man in each. I backed out again, and stood waiting till I felt the boat move from the wharf. I ran up the stairs, and while doing so, felt the boat strike the wharf again. Seeing no one standing at the cabin door, but from the noise at the stern of the boat, concluded it was not safe to venture out. Hearing the word given to cast off, to fire, and an inquiry for rockets, I stepped out on deck, and saw three men standing close by, armed. I concluded to surrender to them, and stepped up to the first one for that purpose. I was thinking what to say, when seeing they did not suspect me, I passed by them toward the bow of the boat, till I got opposite the gang way, and placed my hand upon the railing to let myself upon the dock, when one of the three men came upon and seized me, saying "hello, do you belong to the boat?" I answered, no, I do not—I belong ashore. Their attention was at that moment directed by a pistol that was fired behind them, and I stepped off, upon the dock, got in a position behind the wheel house in which they could not see me, and so effected my escape from the wharf. When I got to the lower track of the railroad, I saw a man lying about 4 feet from the edge of the wharf, with his head to the boat. [The witness here gave the court and jury a description of the dock, warehouse, railroad track, &c. Seeing the man lying there, I passed on to the other track, and got to the other end of the dock, when I saw two men standing there, whom I supposed to be a guard, and concluded I had not got out of trouble yet.—I concluded to hide, and while looking for a place to do so, the people on the boat rushed off, cast her off, and then saw she was on fire. I concluded to try my luck with the two men whom I supposed to be guards, but found them to be men belonged to my boat. It was then nearly light as day from the fire of the boat. I asked them where was King—another of the hands—but they said they knew nothing of what had become of him or of any other of the hands. Just then a man whom I supposed to be King made his appearance on the dock. I spoke to him, and he answered. He was very badly wounded. The next morning I saw Durfee lying on his face, dead, in the same spot where I saw the man lying the night before. His head was shattered. He appeared to have a ball fired through his head from rear to front, coming out at his forehead. He appeared to have bled a good deal. I saw the sealette cap he wore on that night. There were two holes in it on opposite sides, and appeared to be singed on the back side.

It must have been between 12 and 1 o'clock when the assailants boarded the steamboat.

Witness thinks the number of assailants was between 40 and 50. They came in five yawl boats, each of which would carry 8 or 10 comfortably. The men on watch on the steamboat were not armed, nor was any person who was on board. The crew consisted of ten, and there were 23 sleeping on board. They had arrived too late for the cars, and the public houses being overflowing, I provided them with lodgings to accommodate them. I had intended to run up to Black Rock

Bend that night, and had invited a few friends to go with me, and they were also on board. Schlosser is about two miles above Niagara Falls, in the town and county of Niagara. Of all on board, 6 or 7 were missing in the morning, and as many as 7 have never since been heard of as far as I have heard.

On examining King, he was found very severely wounded on the right shoulder, and his left arm, and his clothes were full of blood and cut in many places where the flesh was not reached. Several others were slightly wounded. John Leonard received a blow on the forehead with a blunt weapon. Capt. Harding had a severe cut through his cap, into his head, breaking the skull.

My object in running my boat from Buffalo and intermediate places on both shores, was to make money, conveying passengers and freight—touching at Grand Island, Tonawanda, Navy Island, and stopping at Schlosser. On the day before she was destroyed, she had made two such trips, but little besides was carried on that day. But little freight was offered to Navy Island, and none from it. I took what was offered. On that day Captain Appleby acted for me. Neither I nor my boat had any connection with the Navy Islanders, whatever.

I do not think it was Durfee whom I saw lying on the dock in the night. I think I heard as many as 40 or 50 shots fired during the attack on the boat. No swords were in the possession of any body on board my boat, to my knowledge. The assailants boarded the boat in two parties—one at the forward and the other at the after gangway.

There were several lights burning on board the boat.

Cross examined by Mr. Spencer—I do not know of any light at the companion way at the time of the attack. When I left Buffalo, I had but two whom I had a right to call hands—one was my brother in law, King, the other was a black boy. I never found more than one person who was killed in the attack. I do not know the names of any of the missing. There was no appearance of Durfee having taken a step after he was shot. I have been examined several times before on this subject, but do not remember whether on any former occasions I have mentioned the appearance of scorching on Durfee's cap. She was sold in the summer; I became purchaser and sole owner. There was an understanding between Mr. Scranton and myself, that when navigation opened in the spring he was to be entitled to become a joint purchaser. There never was a bond of indemnity given me for running to Navy Island. There was some conversation about giving me a bond to indemnify me for damage to the boat in consequence of running to Navy Island; but I never had an intention to receive such a bond—never knew who was to give it, and never heard of its completion.

But little freight was taken on board at Buffalo that day. There was one cask containing heavy articles, and some other articles I do not remember. I do not think there were more than half a dozen passengers from Buffalo. I saw no arms upon any person, except one man on board had a rifle, with which he shot ducks on the passage. I do not recollect of taking in any freight at Black Rock Bend, and but about half a dozen people. I saw no arms with any of them, except the rifle before named. There was an old sword lying about the boat somewhere. It was the first trip I had ever made in her, and my attention was mostly taken up with the machinery, &c. of the boat. I have petitioned the government for compensa-

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tion for the loss of my boat, and I have been examined by officers of the government on the subject. My intention was to run between Schlosser and Navy Island as long as would be profitable. I have never understood that if my boat was used to convey munitions &c. to the Navy Islanders, Government would not allow me compensation for her loss.

Among the articles I took that day from Schlosser to the Island was a six-pounder, some lumber, straw, a horse, &c., which I left at the Island. Some muskets also went over—perhaps 10 or 15—there might have been more—may be a hundred. Also, some articles of provisions. I was informed the Navy Islanders would in the course of a week leave the Island, come to this side, and disperse.

I never had any idea that they would go into Canada; on the 26th I visited Navy Island, and saw about 250 persons there, eleven pieces of cannon, some mounted and pointed toward both shores; I do not know who had command at that time, but understood it was Van Rensselaer; I do not know that there had at that time been any firing either to or from Navy Island; I received some \$10 for freight on the last day my boat ran between Schlosser and the Island; I did not receive regular freight on that day; I know of no firing between the Island and the Canada shore on that day—There had been firing a few days before; and a few days after the destruction of the boat. I saw shells thrown from the Canada shore to the Island; before running my boat to the Island, I saw persons on the Island, with whom I conversed about running her to the Island; I saw Van Rensselaer, Dr. Chapin and Mr. Fiagg. They requested me to come there with her, and said I could make money by it; I did not say whether I would run her there or not; I do not recollect that they said any thing about giving me a bond of indemnity nor that they referred me to the "committee of thirteen" at Buffalo. I do not know that I had any conversation with any of that committee about a bond. I have understood that a committee had a Commissary named Phelps, and a Cashier whose name I did not know. The Caroline was at that time lying in Ship Canal, ice bound; and a good many men helped to cut her out. The cutting out was attended with but little expense to me, nor to any body else that I know of. I would have cut her out for any purpose that would make money. She had been undergoing repairs for a fortnight, at a cost of about \$100, which I think I paid with my own money. Mr. Seranton says he paid it, but I think I did. At the time I commenced repairing, I had no idea of running her to Navy Island. I paid \$800 for her—the bill of sale is from John B. Mason. I bought her on the 1st of December, 1837; she was cut out of the ice on the 28th, and destroyed on the 29th.

I know the time when the band that took possession of Navy Island left Buffalo. They had a meeting at the Theatre a day or two before, which I attended. The avowed object of the meeting was to sympathize with the Canadians, Mr. McKenzie addressed the meeting. I do not know who else spoke. I understood that the object in taking possession of Navy Island, was to concentrate there, and "free Canada." I was not in their secrets, however, and cannot speak from knowledge. I never had any idea, however, they would "free Canada."

Direct resumed—I never had any connection whatever with any associations or matters of that sort connected with the Canadian insurrection.—My object in running my boat to the Island was

my own gain, and the accommodation of the public at Buffalo as well as at the Island. It was an experiment I took up in good faith, uninfluenced by any other consideration than my own pecuniary benefit. A great many went from Buffalo to Navy Island and returned in my boat. I presume I brought back more than I took to the Island.

To Mr. Spencer—I know of no cannon ball or boiler iron punchings taken to the Island in my boat. The Collector told me I might go to Navy Island and carry any thing—arms, ammunition, or anything else to Navy Island for freight. He gave me my papers readily and interposed no objection to anything I had on board.

The examination of this witness here closed; and the court, at half past 6, adjourned to a quarter to 8 o'clock to-morrow morning.

TUESDAY, Oct. 5, 1841.

The Court met at the appointed time, and at 8 o'clock was ready to proceed to business.

Daniel J. Stewart was then called to the stand and sworn for the prosecution. In December 1837, I resided in Buffalo, and knew the steamboat Caroline. I was on board of her at Schlosser on the 29th of December, 1837. We left Buffalo about 8 o'clock in the morning, and arrived at Schlosser about 2 o'clock P. M. We stopped at Schlosser about 6 o'clock P. M. and made fast to the dock for the night, with the bow up stream. At one o'clock in the night I was called to take my post as a watch on deck. About half an hour after I came on watch (Capt. Kennedy was on the watch with me) one of us discovered boats nearing us. My first impression was that they were Indians. [A map was here shown the witness to enable him to explain to the jury the situation of the Caroline, the attacking boats &c.] When we first saw the boats they were nearly abreast the bow of the steamboat, and out in the stream. I told Capt. Kennedy that he had better call them up from the lower cabin. The boats were headed towards the steamboat. Capt. Kennedy called them up from below. A few minutes before a man by the name of Nichols came on board, and remained on deck. He hailed them, asking "Who comes there?" or something like it. The answer was "Friends!"

They appeared then to spring on their oars, and approach the steamboat. When Nichols came on board the boats were four or five rods off. One boat approached the stern of the steamboat, and I ran aft to see who they were; and by the time I got aft the officer of the boat had got on board our boat over the rail a little aft the stern gangway. When I got up to him he had got his sword drawn and stood in an attitude as if he was going to strike me. He then ordered his men on deck. I then discovered several other men in the act of getting on deck from the boats. I then passed aft, on the outside passage, to go into the ladies' cabin, to alarm those who were there lodged, if they had not taken the alarm; but they had heard the noise, and had got up or were getting up. I then left the cabin and went ashore. I was not armed, nor did I use any weapon. Neither Kennedy nor Nichols were armed, nor did they discharge any fire arms to my knowledge. I saw no arms among either the crew or those lodging on board, and I have no knowledge of any arms on board, nor resistance, nor preparation for resistance. No attack was expected; it is always customary to set a night watch on steamboats. I did not discover that the

assailants were armed till I met them aft. None had boarded forward before I went aft. They might have boarded forward about the same time. When I came out of the ladies' cabin to go ashore, I heard fire arms discharged in the forward part of the boat. I did not see Durfee till I saw him dead the next morning. I had seen him on board the evening before. I saw 4 or 5 bunts approaching the Caroline. I remained in sight of the boat, above the railroad, till the Caroline left the wharf. After she had been loosened from the wharf she was towed into the stream by row boats. I did not see the Caroline ground after leaving the wharf. When the row boats got her into the stream, they cast off, and made for the Canada shore.

When I came out of the ladies' cabin I heard the officer of the first boat that boarded, give orders to "Guard the gangway, and show the damned rebels no quarters." I saw no firing from the warehouse. I heard clashing of swords on board, as well as firing. It appeared to be pistol firing.

James Field was then called and sworn for the prosecution—I live at Schlosser, and did so in December, 1837. I kept a public house there at that time. I recollect the destruction of the Caroline. I was awake by the alarm and got up.—About 1 o'clock at night I went to the wharf and found Durfee lying there dead. He lay with his head from the water, and his feet toward it—lying partly on his face. A ball appeared to have been shot through his head, from front to rear, coming out about the middle of the forehead. His brains were all blown out. He appeared to have been blown down on the spot. He was about 4 feet from the water.

His cap was found lying close by the side of his head; there were two holes in the cap corresponding with those in his head. It appeared to be singed near the hole in the back part; no person in my house was armed that night—one gun only was in the house—the gun was fired off by a man whom I did not know—he stood about ten rods from the house, towards the river—he fired at the boats that were towing off the Caroline; they had got some twenty rods from the wharf, and about ten rods below the line of the store house; the line upon which the gun was fired was 5 or 6 rods below where Durfee was found lying dead; I remonstrated with the man for firing the gun, and told him it might aggravate the men to attack the house.

John C. Haggarty sworn—I reside at Buffalo—lived there in December, 1837. I was on board the Caroline when she was attacked and destroyed. I was in bed when the watch gave the alarm. I was a passenger on board the Caroline—not a paying passenger. It is a custom among sailing men not to pay passage to each other. We call one at other "dead heads." I was a "dead head" on the passage. If necessary we take hold and help. On the occasion of the assault, Kennedy, one of the watch, came to the door of the ladies' cabin, where myself and others were sleeping, and told us if we did not get up we would be hurried up. We then got up, and I went out, and at the stern starboard gangway, I saw a boat with 10 or 12 armed men in her. The boat lay with her head up stream, and was within 16 feet of the steamboat. Before the yawl reached the steamboat three pistols were fired from the yawl at myself and others, who were near me. One of them I know who he was—fell, and Mr. Leonard as by me, and myself started off. I made

for the gangway on the starboard side, where I was met by men armed with cutlasses, who opposed me and would not let me pass. A boat had been run under the larboard guard, and armed men had got from her, some upon the boat, and others upon the dock. I then started to go forward to the fore gangway, to get off the boat, and when I got forward I was fired at by a man who, with others, was getting on board forward, from boats.—I then ran aft again, and there saw still lying, the man who fell upon the first fire. I then returned forward, and when I got to the fore castle I heard swords clashing and pistols firing. I supposed at the time, that the parties I had met on the boarding on opposite sides of the boat, had come together and were fighting among themselves. I then succeeded in getting ashore, and through the storehouse off the dock. About three-fourths of an hour afterwards I saw Durfee lying dead on the dock. I had been, with four others, down to the Falls to get lodgings, but not succeeding I returned to the boat and went to bed there. I had not been asleep when the watch first called us. I had had in my pocket an unloaded pocket pistol, with a three inch barrel. I know of no other arms on board. I heard no firing before I left the cabin—none could have taken place from the Caroline without my hearing it. The only expression I heard from the assailants before I made my escape, was from a man on the railing of the boat, who said "God damn you!"

Henry Emmons sworn—I was at Schlosser on the night the Caroline was attacked—awake and asleep, and was aroused by an alarm that the Caroline was attacked. I got out into the main road soon, and heard firing of guns or pistols. I was not near enough to hear the clashing of arms. I remained out till the attacking party left the Caroline in the stream, where she was burning.

After setting the Caroline on fire, the attacking party got into their boats, and rowed up toward the warehouse, which, together with the public house, we expected they would attack; but they did not. They then went back to the Caroline, took her in tow, and carried her into the stream. I saw Durfee lying dead on the wharf, probably twelve feet from the edge of it. There was but one gun in the house, which was fired in the direction the Caroline then was. The ball could not have passed within 10 rods of where Durfee was found lying.

John Hester sworn—I reside in Niagara county, and on the night of the destruction of the Caroline was at Field's house in Schlosser. The gun that was fired near the house of Capt. Keeler was loaded with powder only. I saw it loaded. Mrs. Field procured the powder. It was fired merely to scare the people who were taking off the Caroline. I know there was no other gun fired, and that there was nothing but powder and w.d in that. That was the only gun about the house.

TUESDAY, half past 12 o'clock.

John A. Smith called, and sworn—Resided in Buffalo in 1837—was on board the Caroline when she was attacked—was in the ladies' cabin—had not been asleep—first witness heard of the attack was an alarm that boats were coming—thought it a false alarm to get them out of bed—went out, and went forward and saw the boat coming—looked forward—heard a "rumpus" there—went 15 feet forward—then went opposite to the after-gangway on the starboard side, and saw the men coming aboard—a gun was fired, and some one fell at witness's feet—witness supposed that the person who fell came aft—was somewhat fright-

ened—went didn't go very armed on board.

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ened—went out by the larboard gangway then—didn't go very slow!—had to aim—none were armed on board the steamboat.

To the Court—Saw no men or boats near the dock when I went off.

To Spencer—Went on board the steamboat at Black-rock dam—hadn't been down before that winter—didn't know whether the man who fell was one of the assailants, or not—wasn't certain whether there was a light at the gangway.

To Mr. Hawley—I was a dead head passenger.

Spencer—I suppose they were all of that description.

James H. King was next sworn, and deposed—that he resided in Buffalo in 1837—was the mate of the "Caroline"—was on board when she was attacked—recollects the attack—retired to the cabin about eight o'clock—was woken by the firing of a gun—put on his coat and started out, was met by the Canadians, who were armed; drove witness back; struck him with a sword; the cabin was about six feet high; they "banged" witness considerably, and asked him a great many questions, which they gave him no chance to answer; they cut his arm; more than one struck at witness; there were 5 or 6; the lowness of the ceiling prevented them from using their swords much, and witness used a blanket as a shield; there was great noise and clashing of arms; no shooting; they said, when they came in, "roll over, you d—d yankee son of a b—h, and give us these mattresses!" and they threw out the bedding; they took a large basket, put a lamp in it and some sticks, and set all on fire; previous to witness' going out of the cabin one of them said, "what will we do with this fellow?" "Kill him!" said another. "No! take him prisoner," said a third. An officer said "we don't want prisoners, let him go ashore." Witness was at this time standing up near a door, and felt very weak; witness, on the officer's speaking, went towards the gangway, but the sentry wouldn't let witness pass; witness then told the officer, who ordered the sentry to pass witness; the officer was a pretty stout-built man, about witness' height, (5 feet 8 inches); couldn't recollect particularly the officer's appearance, as witness felt very weak; witness then staggered ashore; none of the wounds received by witness were serious—mere cuts.

The Court here adjourned for an hour.

TUESDAY, 2 o'clock, P. M.

TRIAL RESUMED.

The interest in the proceedings seems considerably to increase, and the court-room this afternoon is much more crowded than yesterday or this morning. From the admirable arrangements, however, which have been made, the utmost order prevails. The first witness called at this stage of the trial was

Gilman Appleby—who being sworn, deposed that he resides in Buffalo county—was on board the "Caroline" on the night of the attack—was asleep in the cabin—was woken by the alarm of the watch on deck about 12 o'clock—was then in his berth in the gentleman's cabin, below the ladies' cabin, which was on deck. Some one opened the door and spoke to witness, who immediately got up, put on his boots and pantaloons, went to the companion-way [described the situation of the companion-way]; only one person could pass there at a time; the stairs are winding; attempted to ascend the stairs; Captain Harding and others were there going out, and prevented the egress of witness; a scuffle ensued on deck between Capt. Harding and some one—remained some minutes; then—

heard something like "show the d—d Yankee rebels no quarter," and cries of "Fire! fire!"—there had previously been some firing; as soon as the noise ceased witness returned to open the door a very little—about a foot—a man sprang at the door and made a rush with a short sword—the sword struck witness's breast—it glanced along two of the vest buttons and struck against a metallic button on the pantaloons of witness—witness then fell back and had the lights put out—witness was fearful that the attacking party would descend and thought they couldn't get on so well in the dark—witness then recollected that he could get up through the engine to the upper deck—went into a little pantry and crept through the machinery to the upper deck—there was no one on the deck then—below there was considerable noise—that is on the main-deck—heard nothing said, but there was noise; at the corner of the warehouse there were two boards off and witness crept in there and felt "pretty comfortable;" he then heard a man say "d—n it, what became of the six pounder that was there;" the man was on the dock; some one said, "fetch the light and we may find some rebels there," meaning the warehouse. The light was brought in, and then witness jumped into the water—as he rose to the surface some one struck him on the back, and he then worked his way along till he got ashore, and made for the tavern—thought the blow was given with a boarding pike—saw the man that gave the blow with a sword in the cabin—there was a lamp at the head of the companion stairs—the lamp was a couple of feet from the door, and so high that a man could just clear it going out—then supposed the man to be Mr. McLeod, the man there (pointing to the prisoner,) had seen him once before, when he had an introduction to him at the Eagle Tavern, Buffalo—was not well acquainted with McLeod.

Was your attention called to that subject next day?

Yes.

Whodid you then say it was?

Mr. McLeod—but I might be mistaken.

Did you know Durfee?

Yes.

Did you see him as you went to the tavern?

Yes.

Where?

On the railroad track, lying dead.

(Witness then described the position and appearance of Durfee.) There was considerable blood—the ball had entered on the back of the head—There were thirty-three men, ten of whom composed the crew who were on board the Caroline—none of them were armed—the first shot was from the river side near the bow of the boat—heard like two guns, but would not say positive—the next report was that of a gun fired on board the boat, followed by several reports—there was a little boy called "little Billy" on board—have not heard of him nor seen him since.

Samuel Drown was then sworn, and deposed—that he resides in Canandaigua—recollects the destruction of the "Caroline"—was then at Chippewa, tending bar for Mr. Smith—had previously known the prisoner—McLeod then lived at Niagara—saw him once a week or so—his business was Deputy Sheriff of that District—it is about 20 miles from Chippewa to Niagara—saw McLeod in Chippewa the day of the destruction of the "Caroline"—saw him only once—it was when the rails were burning as a beacon-light up Chippewa Creek—near where a canal was cut from the Nia-

gave to the creek—here might have been a thousand rails burning that night there—saw two or three of the boats return from the "Caroline"—the boats went towards the cut—there is a path along the cut between the canal and the road—the boat landed just below the mile landing on Chippewa creek—three boats landed—was near by when the men in them got ashore—McLeod was one of these men.

Witness was within ten feet of the men. They were talking about the burning of the Caroline. They went towards Davis' Tavern—saw McLeod there—a man he (witness) called McLeod—did not think he was mistaken about him—was then about ten feet off McLeod—McLeod stood about ten feet from the platform.

Did you hear him speak?

There was a good deal of talk.

How sure were you that it was McLeod?

As sure, sir, as I see him sitting there now before me. [A rustling sound in Court.]

When did you next see him?

About day light or sunrise. Some men came into Smith's Tavern where witness was, and said "McLeod was on the steps and was wounded last night." Witness said he wasn't, and went out and looked over to Davis', and saw McLeod standing on the platform in front of the door. That was about four or five yards from Smith's Tavern, where witness was. McLeod had a belt round him and a sword hanging at his side.

Isaac P. Corson was then called and was sworn. Deponent says he resides at Niagara Falls; is a master builder; once lived at Chippewa; lived there in '33, and from that until '38; recollects the destruction of the Caroline; knows the prisoner; has known him since 1833; saw him in Chippewa about three o'clock of the afternoon before the burning of the Caroline; there were several others with him; they were taking liquor in a store; McLeod remained a very short time, and walked out; they asked witness to retire, as they had some private business; saw McLeod again about 9 o'clock in the evening; saw him then come out of the bar room door; there was one man behind him; saw him next after that in the morning on the stoop at Mr. Davis'; did not see whether he was armed; there was a crowd round him; he was telling of his exploits on the boat; the performance he done in the Caroline; he was saying, "they would not wish to see him there again, as he had put one d—d Yankee or two out of the way;" there were others who boasted of having been in the expedition: none of them disputed the truth of McLeod's assertions; saw McLeod a day or two afterwards coming up from the point at the creek; he had a spy glass; he then spoke of the Yankees as rebels and robbers, and he would like to be on just such another expedition as the Caroline, and set out and burn Buffalo.

The hour of adjournment, six o'clock, having now arrived, the proceedings of the day terminated.

WEDNESDAY MORNING, (Third Day.)

Judge Girdley presiding.

On the opening of the Court this morning, Mr. District Attorney Wood, for the prosecution, called to the stand Charles Parke, who being sworn, testified—

I am a native of Canada, and was raised at Chippewa. I was tending bar for Mr. Davis, in that place at the time of the destruction of the Caroline. I had then been with Mr. Davis 3 or 4 months. It was first discovered that any one was on Navy Island, on a Sunday. I know the pris-

oner McLeod, have known him a greater portion of the time he held the office of Deputy Sheriff of Niagara District. During the afternoon preceding the destruction of the Caroline, I saw him at Chippewa. I saw him a number of times during that day, and toward the close of the day, I saw him also after dark. A gentleman came in and inquired for him between 8 and 10 o'clock in the evening, and he was shown to McLeod's chamber—he having retired to bed. McLeod got up, dressed himself, came down into the bar room, and told Mr. Davis that if his, McLeod's, brother inquired for him, to say to him that he had gone to Niagara. About half or three quarters of an hour after that, I saw him again, between Davis' and the Chippewa Cut. There were a number of people about and near him, but whether they were his company or not I cannot say. After that, I saw him, and some hundred more by the side of some boats on the bank of the river. Some got into the boats, but afterwards they got out, and towed the boat about three quarters of a mile, where they embarked on board the boats, and shoved off from the shore. They steered across the river, but I do not know where they went. The boats were towed up empty on account of the current. This occupied about an hour, and then I returned home and went to bed, leaving up Mr. Johnson, who was also a bar-tender in the house. I have not seen Mr. Johnson lately, but understand he is at Detroit.

The next I saw of McLeod was about sunrise the next morning, when I saw him on the square in front of Mr. Davis' house. There were a number of people not far from him, but none very near him, nor do I know that any one was in his company. If I recollect right, on the previous evening he wore a sword by his side. I did not hear him say anything. I saw him again not long afterwards, in the forenoon, while I was standing on Mr. Davis' stoop. Afterwards I was in the habit of seeing him frequently—almost every day. A number of officers boarded there. I have heard him say something about the destruction of the Caroline. A few days after, a number of them were conversing about it—Capt. Stennett was one, Maj. Cochran, of Dragoons, another, and four or five more; and McLeod said, in purport, that he had killed a Yankee. Their conversation was in reference to the Caroline. I can speak quite positive about McLeod's getting into the boat.

Henry Myers, who being sworn, deposed that he lives near Canandaigua—works on a farm—once resided in Canada—is a citizen of the United States by birth—left for Canada seven years ago; has not been there since—has seen the prisoner before this trial—returned from Canada shortly after the Caroline was burnt—saw the prisoner twice in Canada—once at St. David's—and when I moved out of Canada, at Niagara—saw him on the latter occasion in a tavern on the north side of the road, to bait his horses—went into the bar room—saw there a number of soldiers—some had weapons—some had not. There was some talk about the man that shot Durfee—one said "Where's the man?" McLeod said, "Here he is—I'm the man!" He then pulled out a horseman's pistol and said it was the pistol that shot him. Then he pulled out his sword, and said "there's the blood of a d—d Yankee!"—holding on the sword. There was blood on the sword—on the end for about four inches—it was day—witness went out to feed the horses—two or three followed him out—they ask-

ed him what was going on—some kee, and he and should order the shot if witness might get doing this treated to ed to go at since hear-

Calvin—He deposed that he saw the ferry across 6 miles between two towns in a public town of New York; saw John Meredith, whom he was sitting room versing—cock in taken place how many that he th four; and and one d—d one d—d said some stand; Mo say a-yth correctly or very as the per-

The first Elijah reude in boat; was commodore on board of the went through the people themselves ferry boat a marsh at that time arms in America Canada. been my that ind Seth side at Y Chippewa bus r was dea "I had se before a clock of Caroline pews; through any on cannot not; I fore su em; th

ed him where he was going—witness replied he was going to Geneva, as his wife didn't like Canada—some of them said witness was a d—d Yankee, and McLeod said witness was a d—d rebel; and should not go any farther. Witness said under the shed some time, and at last McLeod said if witness was a mind to treat the company I's might go home—witness said he wouldn't mind doing that—then went into the bar room, and treated to the amount of a dollar—then was allowed to go and proceeded on his journey. Has not since heard McLeod say any thing of this matter.

Calvin Willson was next sworn and examined. —He deposed that he resides in the county of Niagara; knows the prisoner; owned and kept the ferry across Niagara, called Youngstown ferry, 6 miles below Kingston ferry; saw the prisoner between the 5th and 15th of Jan. 1837; saw him in a public house kept by one James Miller in the town of Niagara; there was a number of people with him; he knew a young man of the name of Keyncock; also saw Mr. Miller; thought that he saw John Mozier there; also a young man named Meredith, and a young man named Elmsey whom he had seen before; they were in a sitting room in a public house—heard them conversing—the subject was brought up by Keyncock in reference to the Caroline affair which had taken place a few days before; he wished to know how many had been killed; then McLeod replied that he thought there wasn't more than three or four; and he didn't know but five might have been and one thing he did know, he said, there was one d—d Yankee rebel, shot on the wharf; he said something else which witness did not understand; Mozier didn't say anything; Elmsey did not say anything that witness recollected—had stated correctly what the witness said; the very words, or very nearly; recognised the prisoner at the bar as the person who used said words.

AFTERNOON SESSION.

The first witness called to the stand was

Elijah D. Effner, who being sworn, deposed—I reside in Buffalo; recollect the Caroline steamboat; was on board of her at Schlosser. The accommodations being poor at Schlosser, I applied on board for lodgings. This was between 2 and 4 of the afternoon preceding her destruction. I went through her and found no arms, and asked the people on board how they expected to defend themselves if attacked. They said they were a ferry boat, and not allowed to carry arms. I was a marshal deputed specially to preserve the peace, at that time. I saw some persons come aboard with arms in their hands. They were strangers, not Americans; they told me they were from Lower Canada. They wore Canadian caps. It may have been my duty as a marshal to see who they were, that induced me to inquire of them.

Seth Hinman sworn for the prosecution. I reside at Youngstown, Niagara county; I was in Chippewa in December 1837, working at the joiner business; I was there at the time the Caroline was destroyed, and know McLeod, the prisoner; I had seen him at Youngstown and Chippewa both before and after that event. Between 7 and 9 o'clock of the evening preceding the burning of the Caroline I saw him in Davis's bar room at Chippewa; there were a number in the room; he passed through the room and went out; I don't know that any one was with him; others passed in and out; I cannot say that he was armed, nor that he was not; I did not see him again till about a little before sunrise the next morning, near Davis's tavern; there were not then others about him; I did

not hear him say any thing, nor did I observe whether he was armed.

Charles Yates sworn—I reside in the west part of the town of Clarkson, Monroe county. At the time of the burning of the Caroline I lived in Canada, about 100 miles below Toronto, to the northeast. I don't know that ever I saw McLeod to know him till I saw him at Niagara jail, at Lockport. I believe it was last April. I have been at Queenston several times; the first time I was there was during the winter of 1839. I was in at a public house there, and there were several others there, some went up to the bar and drank; one said "this is something like the night after the burning of the Caroline." Another replied, "Yes, we gave them Aleo; I should like another job just like it." I cannot say that McLeod was one of those persons, but somebody whom I did not know told me he was McLeod.

William W. Caswell sworn: I reside at Buffalo, lived at Chippewa in 1837, remember the burning of the Caroline, and had known McLeod two years before that event. About 9 o'clock on the evening before the Caroline was burned, I saw McLeod at Chippewa, between Davis's tavern and Macklin's store. He was going toward the store, I did not see him again that night, nor did I see the expedition against the Caroline start. I saw McLeod about 7 o'clock next morning, near sunrise, on Davis's stoop. He came from the direction of Davis's barn, which adjoins the house. I heard him talking with a number of others. I heard him say the taking of the Caroline was handsomely done, that "we made the damned rebels run when we came," and he and others, who appeared to have been in the expedition, went on and told what part they had taken in the expedition. McLeod had a large pistol in his hand—I didn't hear him say anything about the pistol. He held it by the muzzle. It is three miles from Chippewa to Schlosser—the passage can be made in a row boat in 20 minutes—I have made it in that time. McLeod, or some one of the company, said they had left one man lying dead on the dock, and that he would never come back to annoy them any more.

Anson D. Quimby sworn. I reside at the town of Columbus, Warren county, Pennsylvania. In Dec. 1837, I resided some two miles from Chippewa village. I recollect the destruction of the Caroline. At that time I knew Alexander McLeod, but not intimately. On the evening before the burning of the Caroline, I saw him at Davis's Tavern, Chippewa, about 8 o'clock. He was coming out of the bar room as I was going in. I did not see where he went to. The next morning, not far from sunrise, I saw him again, not far from the end of the bridge that crosses Chippewa creek.

Some of the Coburg troop were with him, but I did not know "them personally. Some one came across the bridge, and asked, "How did you make it go last night?" McLeod said they "made it go very well." He added that he, or me I am not certain which "killed some of the damned Yankees," and added that he had Yankee blood on his sleeves. He held up his arms, but I did not see any blood. I heard no more, but passed on. I do not know that I saw him on any other occasion.

Justus F. T. Stephens sworn—I reside in the town of Gaines, Orleans county. I was in Canada on the night of the destruction of the Caroline; I know McLeod and saw him at Chippewa on the evening designated; I have known the prisoner since the fall of 1835; have never conversed with

him since the night stated; I think it was between 10 and 11 o'clock of that night. I saw him; When I first saw him he was very near Niagara River, near a canal, or race, some 15 rods from the head of the race; he was there with a number of others; they were about getting into some boats; they entered the boats and went off.

Mr. Hall:—Did you see the prisoner get into a boat. I am positive I did. How near were you to him? I was within 5 or 6 feet. Were the men armed? Part were armed I know—it may be that all were not. Was the prisoner armed? He wore a sword. Well, what then. After getting into the boat they put off from the spot I first saw them, went out of the head of the cut, and put out and up the river. How many boats did you see? I saw but three.

The Court: Did the prisoner go off with the boats? He went off in the boat he entered.

Mr. Hall: When and where did you see the prisoner next? About 5 hours after, and about 3 o'clock in the morning, the boats came back, and landed a little above the cut, where there were a number of rails burning. McLeod and some others got out of the boats there, and went across to a tavern kept by a man named Davis, I believe.

To the Court: They disembarked 4 or 5 rods above the head of the cut. I am not positive that all disembarked there—I saw three boats return—the same number that returned.

Mr. Hall: The witness is with you, Mr. Spencer.

Mr. Spencer: I have nothing to ask him—nothing—no.

Mr. Hall then called to the stand Seth C. Hawley, for the purpose of proving that Mr. Johnson, spoken of by several witnesses, was at the time of the destruction of the Caroline, a barkeeper at Davis's tavern, at Chippewa, at present residing at Michigan; that every proper effort had been made by him (Mr. Hall) to procure his attendance at this trial, as his testimony would obviously be important; but that, being out of the jurisdiction of this court; his attendance could not be compelled. Mr. Hall did not wish this explanation formally made for his own sake; but, unexplained the opposing counsel might make use of the absence of this important witness, in his argument to the jury, to the prejudice of the prosecution.

Mr. Spencer said he should not so use it, as he readily acknowledged the Attorney General had used every reasonable exertion to get together witnesses for the prosecution; and the Court deeming the explanation unessential, it was not gone into.

The Court here took a recess for one hour, then to resume the examination of witnesses for the prosecution, and probably finish them before adjourning for the night.

WEDNESDAY EVENING.

At seven o'clock the proceedings were resumed.

Mr. Woods stated that there were urgent reasons which impelled him to solicit leave of absence during the remainder of the trial, and Mr. Hall, after complimenting Mr. Woods on account of his able assistance, expressed his readiness to join in that gentleman's request.

The Court acceded to the application of Mr. Woods.

Leonard Anson was then called to the stand, and having been sworn deposed as follows—Resides at Niagara Falls; was in Chippewa in D. C. 1837; remembers the 29th of that month; remem-

bers the burning of the Caroline; I was at Smith's house during the attack; remained in the house till morning; saw McLeod there in the morning—knew him personally; he was well known there as deputy-sheriff; there were a number of people in the bar room who were talking of the expedition, and who had done the greatest deed; the persons spoke as if they had been in the expedition; heard McLeod say, "we killed one d—d Yankee, and here's the blood." Heard nothing else particular said; there was a kind of dispute amongst them who had done the greatest deed, but none of them dissented from what McLeod said; stated there some time; knew of the destruction of the Caroline before that morning; knew it the night before; the sentinel told him; was driving a team at the time of the outbreak; gave up that because he couldn't get pay; is now employed by Mr. Porter.

THE DEFENCE.

THURSDAY MORNING—Fourth day.

On the opening of the Court, Judge Gridley stated, that anxious as he was to relieve the Court and jury of this case by the conclusion of this week, still the Court felt no disposition to urge the counsel to greater speed than was consistent with the full discharge of their important duties, and wished counsel not to feel pushed by the Court beyond a proper and consistent degree of dispatch.

Mr. Spencer then called to the stand

Alexander C. Hamilton—who deposed that he resides at Niagara, U. C. has resided there since the summer of 1835. I know William W. Reyncock, spoken of by the witness, Wilson. He was deputy collector of the customs at the Port of Niagara. I cannot say what was the precise time that Reyncock left Canada, but I know he was not in Canada in the forepart of November, 1837. I went to England in January, 1836, and when I returned in November, Reyncock was gone. I had been on habits of particular intimacy with him. He has not been in Canada since, to my knowledge, and I don't think he could have been there without my knowing it.

Hulett Lott, sworn—I am a farmer, and reside in Lottsville, Warren county, Pa.; I know the witness, Aaron D. Quimby; have known him four years; I know his reputation—it is bad; I would not believe him under oath.

Lansing W. Wetmore sworn—I live in Warren county, Pa.; know the witness Quimby; have known him three years; have heard his reputation spoken much of for the last six months; the reports against him for truth and veracity is uniformly bad; I would not believe a word he said under oath, unless he was corroborated by other testimony; he has been frequently in courts at home as a witness.

Cross examined—I live 6 or 7 miles from him; I am a lawyer; I attended the last term of the Common Pleas, and was engaged in the cause in which Quimby was a witness; I was employed on the side of the party to which his testimony was opposed; his testimony was of some importance, no witness was called to impeach him. How came you here? I came at the request of Mr. Spencer, under much the same circumstances as stated by the last witness, Lott; Quimby's own brother speaks hardest of him; he had a lawsuit with his brother; I never knew what Quimby's politics are. Have you expressed or do you feel any interest as to the events attending the burning of the Caroline? I have felt opposed to the proceedings of the patriots, but I do not think

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ever justified the burning of the Caroline. Did you ever express an opinion that McLeod ought not to be tried? I do not know that I ever have. I might have said I thought it a matter which the government ought to settle.

Samuel Drown, recalled by Mr Spencer.

Did you have a conversation, in February last, with David C. Bates, in which you said you knew nothing about the burning of the Caroline that would do McLeod good or ill? I do not know whether Mr Bates was present, but when I was subpoenaed to go to Lockport to testify, I said to my brother in law, Mr Hayward, that if they could not find a bill against McLeod without my testimony, they could not convict him with it. I recollect no conversation with Mr Bates.

David C. Bates sworn. I live in Canandaigua, and know the witness Drown. Some time last winter, Drown told me he was subpoenaed to go to Lockport in the McLeod case. I asked him what he knew about it? He replied that he did not know that he knew enough about it to do McLeod either good or harm.

David H. Sears sworn. Resides in Canada; now in the British service as captain of incorporated militia; was the commander of the guard at Chippewa on the 29th of December—it was the inferior picket guard, and extended from the Tavern of Davis to the lower point of Navy Island; the main guard ended at Davis', the bridge was between Davis' tavern and the place of embarkation; from that point sentinels were stationed; the first sentinel near the place where the party embarked on the Chippewa Creek; the place of embarkation was very close to the cut where it entered the Chippewa, there were a considerable number of large trees at the place of embarkation, covering the shore there with their shade—the next sentinel was at the mouth of the cut, six or eight rods above the cut; the cut was about a hundred yards through, he couldn't exactly say; and the sentinel was half way between the second and a guard house built of boards, which stood about a quarter of a mile below the curve point of Navy Island, on the Canada shore of the Niagara river; at the guard house there was the fourth sentinel; the guard house stood above the road from the river, and another sentinel was on the other side of the guard house; another sentinel was very close on the bank of the river on the road about 20 rods above the guard house; another was about that distance further on; that was the limit of witness's command; was up all that night; was present when the party embarked;—Col. McNab was not there that I knew of, as it was dark, and I couldn't distinguish any one I didn't well know or see nearly; the point of embarkation was just below the mouth of the cut; some of the boats might have been in the mouth of the cut; there were seven boats; was near by them; was mixed up with the party; knew McLeod then; had known him since '34 or '35; knew him very well; saw him very frequently; saw nothing of him in the party; the party when they left some of them and nearly all rowed till they got into the cut, when some of them began to "track." I was directed to tell the sentinels not to challenge boats coming upon the expedition, was wished to be kept secret, and the challenge might have been heard on Navy Island—and an officer of Col. McNab's staff rode up, and instructed the sentinels not to challenge the boats—witness accompanied the expedition as far up as his guard extended—other officers had charge of the guard higher up—is not positive as to who

had charge of the guard above—the boats went still higher up so that witness did not see them—this was about 10 o'clock at night—witness then came back to the guard-house and remained there till he saw a light at Schlusser—now knows that that was the Caroline on fire—then went to where the beacon light was just firing up immediately on the cut—remained only a few moments at the beacon light—went immediately to the orderly room within the main-guard which was kept at a house in the same square with Dairs—went there to tell the officer of the burning of the Caroline—then returned to the beacon light—did not remain station there very long—but observed the Caroline floating down—the fire had raised the steam so that it was easy to see that it was her—remained at the beacon light till the boats returned, about 2 o'clock in the morning—Would persons be allowed at that time to walk there without being intercepted? No one can pass without the countersign.

How many boats returned? At first, five nearly together. How long apart in getting in? Four came not far apart—one fell below and had to row against the current—it was about half an hour behind. Where did they disembark? Where they had embarked. Were you among them when they landed? Yes. For what reason? I had one or two particular friends in the party and wished to know their fate. Did you find them? I did. Did you notice the party particularly? I did. Did you see McLeod among them? No. Did you see anything of the other boats? Yes—it was daylight when they came in, I think. You saw them pass the beacon-light? It was then nearly extinct. Did they land? They did—but I think I did not witness them landing. The other party had gone ashore? Yes.

Were you at Davis' Tavern during that night? I was frequently and early in the morning. Did you see McLeod there? No—I remember seeing him the day before about noon. Not that morning? No. When did you see him next day? About 11 o'clock. Where? I and another officer had gone up the river opposite Navy Island near the residence of Captain Usher. Did you see McLeod come up there? Whilst standing there we saw them bring up a cannon.—Who? The people on Navy Island—and they charged the cannon—and looking down the shore we saw two or three gentlemen horseback, some one said "that's Col. McNab," but I said "No, it's Mr. McLeod." I remained there for some hours, when the two gentlemen returned. When was the firing? Just as McLeod and his party came up together. Had there been any firing that day or day previous? Yes—the day previous. Cannon? Yes. They fired at the people on the Canada shore? They did. Any killed?

Mr. Hall—I object—I object to such a course. Mr. Spencer—My learned friend seems a little resolute—surely I indulge no feeling of smuggling in evidence. I hold that full evidence relative to the conduct of the occupants of Navy Island is relevant, and I apprehend he will find it difficult to show that this is not competent evidence. Has he himself proceeded in that way? I did not at all anticipate that a question would be raised here.

The Court said that it had been already decided that the authority of the Supreme Court must regulate this trial. With respect to this cannonading, it had already been shown, and the hostile character of the occupants of Navy Island was fully gone into, and rendered recurrence to the op-

operations of the Navy Islanders unnecessary and illegitimate.

Mr. Spencer requested his exception to be noticed to the refusal of the Court to receive his offer to show that three of the Canadians were killed by the cannon fired from Navy Island.

Examination of witness resumed—Is it safe to cross at Navy Island in winter? Yes—for persons accustomed to do so. Is there ice at Schlosser so as to intercept the passage? No—unless floating ice from Lake Erie. Is it a swift current there? Not so strong as on the Canada shore.

Would a steamboat on that river then be a most powerful auxiliary of the Navy Islanders?

Mr. Hall objected.

The Court overruled the objection.

Mr. Spencer requested the Court to note the question.

Cross examined by Mr. Hall—Where is the place of your nativity? Canada. Where? Caldwell's Manor—forty miles from Montreal. Have you resided any where else? In the United States. Where? Rochester. How long? I think I went there in '24 and returned in '28. Were you in the army? Yes. Where enlisted? I was drafted. Where? About 60 miles from Montreal in the Eastern Township. In what year? 1813.

When did you go to that place and where from? I had been there many years. How many? From I was six years old. How came you to go there? My parents took me. What was your occupation in Rochester? I went to publish an elementary school-book.

What was it? A pronouncing dictionary. What turned your attention to that? My property was burned and I was sick, and when convalescent I opened a school and there originated the book.

The Court remarked that it had frequently felt disposed to stop such a course of examination. If they were to have as many autobiographies as witnesses, they would not get through for a year.

Examination continued—Were you ever connected with the patriot party? Yes. Are you a captain now? No. You were? Yes. In the army? No, in an incorporated company of militia. Of what county were the guard you spoke of? They were colored men. Had you this company at Chippewa? Yes. How did you receive your authority? I was commissioned by the Governor to take command of them. Were there any Indians among you? Yes.

The Court was desirous to give Mr. Hall the utmost latitude in relevant matters, but really the sagacity of the Court could not discover any relevancy in such a course of examination. The case should be tried in a lawyer-like way.

Mr. Hall proceeded—Where was the sentinel placed at the point of embarkation?

Witness again described the position of the sentinels as he had on his direct examination. He was also minutely questioned respecting the character of the place where the boats embarked?

THURSDAY, TWO O'CLOCK P. M.

The proceedings were resumed by Mr. Hall, who continued the cross examination of Sears.

Mr. Spencer then said that he now proposed to bring forward the documentary evidence. The learned gentleman stated that he would first introduce the various official documents that had reference to the negotiations at present pending between the governments of the United States and Great Britain.

Mr. Hall—For what purpose?

Mr. Spencer—With a view to establish the

fact that the destruction of the *Caroline* and the killing of Duffee were the acts of the public force of Great Britain—which acts were subsequently acknowledged by that government.

Mr. Hall—You wish then to establish that there was a war?

Mr. Spencer—Yes. Or such a state of matters as released the individuals acting under the order of the government of Great Britain from all responsibility in regard to the consequences of their acts in that capacity. Mr. S. then proceeded at very considerable length to shew that though there had been no formal declaration of war, yet the provincial government of Great Britain had a right to destroy the *Caroline* in self-defence.

Mr. Hall rose to reply—

The Court relieved Mr. Hall from replying and expressed its judicial opinion as follows:—The present indictment has been sent down to us by the Supreme Court, to be tried like any other issue in the Circuit Court. A motion was made for the prisoner's discharge on the ground that that Court could look behind the indictment, and doing so would be justified in discharging the prisoner. The Supreme Court came to the conclusion that they had no right to look behind the indictment; and second, if they had, that the motion should be denied for the want of merit or of soundness of the ground on which it was urged—on account namely of the absence of any thing like war, in such a sense which makes the killing of individuals excusable or justifiable; and for the reason that there was nothing in the pending negotiations which took away the right of New York to punish offenders against her laws. This opinion the Supreme Court after the case had been ably and deliberately argued before them, and which opinion though for the most part written by one was the expression of the united judgment of all the members of the Court. From that opinion, even if I did not agree with it, I cannot dissent. That decision is law with me and may be briefly stated thus:—A band of men composed of Canadian rebels and American citizens who voluntarily joined them. These took possession of Navy Island, and were therefore a hostile force invading Canada. They were directly hostile to the Canadian Government, and I have no doubt that the Canadian authorities had a right to repel that invasion—to suppress that insurrection, and to use all the means which nations, when engaged in war, may use, against rebel subjects or foreign enemies. But while that is true, it is proper also to look at the rights of neutrals. Every citizen of the United States who chose had a right, so far as respected his obligations to his own government, to expatriate himself and join the insurgents, but when he done so he was subject to all the consequences that the rebel subjects of Great Britain incurred. Any of our citizen who chose had a right to carry provisions and munitions of war to those insurgents at the risk of their forfeiture if captured, and in that view the *Caroline* was liable to seizure if a portion of the armament of the Navy Island, when the, or if possible on the high seas. But that every member of that hostile band when on our shores was secure from injury by the adverse power; and the British government had no more right to send armed men from Canada to make an attack on that steamboat *Caroline*, than they would have had to send armed men to Buffalo to seize on the arsenal, from which they feared the rebels might take arms, or to assassinate the Mayor of that city, lest he might give up these arms.

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Then in my view are the decisions of the Supreme Court—not only opinions put forth in their decision, but clothed with authority, binding upon me, and which I have no discretionary power to set aside, even if I had examined the question fully and came to an opposite conclusion from that of the higher Court. I am administering law here subject to the review of that very tribunal, and I therefore feel bound to reject the proposition to offer these matters in evidence.

Mr. Spencer asked the Court to note his exception to its decision. Mr. Spencer then said he would commence with the deposition of Col. Allan McNab.

Mr. Hall said he objected to the admission of that deposition on the ground that while replying to the interrogatories Col. McNab read his answers from a written statement previously drawn up, contrary to the law regulating the execution of the commission.

The objections were finally overruled, and the reading of the deposition commenced. Almost every interrogatory however was met by some technical objection on the part of Mr. Hall, which protracted the reading of Col. McNab's testimony till a very late hour.

THURSDAY NIGHT.

Deposition of Allan McNab.—I know a body of militia was assembled at Chippewa in the month of December 1837, and January 1838, to the number of between 2000 and 3000 to repel an expected invasion from rebels and American brigands assembled on Navy Island and on the American shore near Schlosser. They were ordered out by the Lieut. Governor of U. C., Sir Francis B. Head. Sir Francis was at Chippewa more than once during the months before mentioned. I assumed command of the forces assembled there by his directions. I remember the last time when the Caroline came down previous to her destruction. From information I had received, I had every reason to believe she came for the express purpose of assisting the rebels and brigands on Navy Island with men, arms, ammunition, provisions, stores, &c. To ascertain that fact, I sent officers with instructions to watch the movements of the boat, and to report the same to me. These gentlemen told me they saw her land a cannon, several men, armed and equipped as soldiers, and that she had dropped her anchor under the east side of Navy Island. Upon the information I had previously received from highly respectable sources in Buffalo, together with the report of these gentlemen, I determined to destroy her that night. I entrusted the command of the expedition for that purpose to Captain A. Drew, Royal Navy. Seven boats were equipped and left the Canadian shore, but I don't know the number of men in each boat. I ordered the expedition, and first communicated it to Capt. Drew, on the beach where the men embarked. A short time previous to their embarkation Capt. Drew was ordered to take and destroy the Caroline wherever he could find her. I was on the beach when the boats embarked, and when they started I had been there about a quarter of an hour. I noticed most of the persons going into the boats. I stood within 2 or 3 rods of most of the boats as the men went, and while they were preparing. I have known Alex. McLeod 5 or 6 years. I think I saw him on the day previous to the destruction of the Caroline, but in what place and on what business I do not recollect. I did not see him when the boats shoved off to destroy the Caroline. He was not in my presence that evening. I was on the shore when they returned, and was

near the boats when the men landed. I saw the faces of perhaps one half of those who landed, but I did not see Alexander McLeod, nor do I know where he was. I saw the C. on fire going down the river after the boats had left her. I think I made a return to the Lieut. Governor of U. C. of the officers and men who destroyed the Caroline, and I am sure the name of Alex. McLeod was not among them. I was not in command when the force took possession of Navy Island.

Mr. Spencer then introduced and read the deposition of John Harris, some portions of which also met with opposition, many of the objectionable interrogatories and replies contained in the McNab affidavit being also embraced in this. The admitted testimony of Harris was substantially as follows—

Deposition of John Harris, of the town of London. I have no personal acquaintance with Alexander McLeod, and am not certain that I ever spoke to him in my life. I knew him by sight, and not for a longer period than a week. I recollect the destruction of the Caroline. I was in Chippewa a week or ten days before that occurrence. I was in that expedition, and was engaged under Captain Drew in manning the boats; and I had every opportunity that an officer has of seeing and noticing those engaged. Alexander McLeod was not in any of the boats, nor was there any in the boats of that name. I was in the boat with Captain Drew, and saw all the persons in the boat. McLeod was not in, nor did I see him at any time. I was one of the boarding party, and boarded her aft the wheel house. I went forward to the fore-castle hatchway, and was in her cabin also. I believe I was the last person who left her. With reference to Alexander McLeod, he was not with the assailants, nor did he have anything to do with the destruction of the Caroline.

I did not see that any person was killed, nor did I see any person placed on the wharf. I saw one man severely wounded. I saw the men on their return to the Canada shore. Alexander McLeod was not among them. Their names were particularly taken down on their return to Chippewa, as they left the boats. The name of McLeod was not on the list. I saw the list then, and have seen it since. Seven boats left Chippewa, five only reached the Caroline, and five returned in company. I know Sir Allan McNab. He was on the beach when we started. It was by his command that the expedition was undertaken as commander of the forces on that station. The directions I heard him give were to destroy her wherever we could find her. Captain Andrew Drew was in command of the expedition by order of Sir Allan. I know nothing more than I have stated. All I can say is, I am positive Alexander McLeod was not in the boats, as I was employed as an Aid de Camp to Captain Drew in superintending the manning of the boats.

The next deposition introduced and read was that of Edward Zealand, who testified in substance (as far as admitted in evidence, as follows—

Deposition of Edward Zealand, of the town of Hamilton, aged 45 years. I know Alexander McLeod, and have known him since Jan. or February 1838, but was not acquainted with him prior to that. I recollect the destruction of the Caroline, and was at Chippewa at that time. The expedition embarked from Chippewa Creek. The persons engaged were an hour or two making preparation for it. I was assisting but had no opportunity of observing the persons engaged, except those in the boat I was in. I do not know where McLeod was at that time. He was not in the boat with me, nor was he in my immediate neighborhood. I went in the boat commanded by Capt. Drew. McLeod was not in our boat, nor did I see him on our return to Canada from Schlosser. I was on board the Caroline the night of her destruction, aft in the cabin, on the larboard side. I got on board about the same time with the other assailants, and was nearly the last to leave her

I did not see McLeod among the assailants, and I do not believe he was among them. There was a dead man lying on the deck at Schlosser, but he was not conveyed there. He met his death during the attack on the Caroline, but I do not know whether he was shot on board the Caroline or on the dock. I think the shot that struck him was from the direction of the tavern or store. He could not have been conveyed on shore without my knowledge. I saw the men engaged in the expedition on their return to Chippewa, but I did not see McLeod among them, and believe he was not there. Seven boats started; five reached the Caroline, and five returned, almost in company. I know Sir A. McNab, but do not know where he was when the expedition started. I did not hear him give any orders, nor do I know by whose command the expedition started. I have no doubt it was started by Sir A. McNab.

Knowing Capt. Drew to have been in the navy, I do not think he would have entered upon it unless properly authorized to do so, and on that account I joined. Capt. Drew commanded, but I do not know by whose order.

The court here, at 10 o'clock, adjourned till morning.

FRIDAY MORNING, Oct. 8.

The court met at 8 o'clock, and the counsel for the prisoner resumed the reading of the depositions taken under commission. The first read was that of Wm. Small Light, which stripped as the preceding ones of the excluded portions, was substantially as follows—

Deposition of William S. Light, of the township of North Oxford, in the district of Brech, and province of Canada.—I have no personal acquaintance with Alexander McLeod—he was once pointed out to me in the streets of Chippewa, but whether before the 27th of Dec. 1837, I cannot say. I believe him to be a British subject. I recollect the destruction of the Caroline. I was at Chippewa at the time. I cannot speak positively as to the persons who went on that expedition, except such as went in the same boat with myself. I do not know where A. McLeod was when the boats first put off. He was not in my boat.

I saw the Caroline on the night of her destruction. I boarded her on the starboard bow, and was the first on board from my boat.

Alexander McLeod was not among the first assailants from the first attack upon her till her final destruction, to my knowledge. I saw no one killed on board the Caroline. I saw a man in the after cabin desperately wounded, and was ordered by Captain — Drew to carry him on shore. I took him to the gang way, and believe that he either walked or was carried on shore, but cannot say positively, as I did not see him.

The next deposition was that of John Gordon, who deposed in substance as follows:

Deposition of John Gordon of the town of Hamilton, Canada: I know Alexander McLeod, late Deputy Sheriff of the District of Niagara, by sight, but have no personal acquaintance with him. I think the first time I saw him, was when he was a passenger on board the steamboat I commanded. I cannot state precisely that I saw him more than once. I recollect the time of the destruction of the Caroline, I was in Chippewa at the time of her destruction. I had been there a few days before that time. The persons who went in the expedition embarked at the mouth of the Chippewa river. I was there about half an hour before their embarkation. I do not know how long the others were there before I came. I re-

mained on the beach during that time, I had no opportunity of knowing any of the persons except those in the boat which I commanded. I do not know where A. McLeod was; he was not in my boat. I saw all the persons in the boat I went in before landing at Schlosser. I am satisfied A. McLeod was not one of them. I did not see him in my way from Canada to Schlosser. I saw the Caroline on the night of her destruction. I was on board of her; I was not below,—that is to say, in the gentleman's cabin; but with this exception, I think I was in every part of her. Went on board of her, at the same time with the other assailants, and went on board the six part of her. After the whole of the assailants had left her, I returned for the purpose of securing her colors; and was on board for, I should think, nearly five minutes. I did not see A. McLeod on board the Caroline,—to the best of my knowledge he was not there. I did not see, nor do I know any thing of any person having been killed during the attack on the Caroline, or conveyed on the Canada side at Schlosser, and remaining there. I did not see A. McLeod that night or since.

The seventh deposition read was that of Christopher Beer, who was in the same boat with dependent Gordon, and which was as follows:

Deposition of Christopher Beer, aged 49 years, a naval officer attached to the war steamer Minor. Prior to the destruction of the Caroline I knew Alexander McLeod by sight, but had no acquaintance with him; I was at Chippewa at the time of the destruction of the Caroline, and was in that enterprise. I know all in the boat with me; McLeod was not among them. I did not see him at all that evening; I was in every part of the Caroline; went on board with the rest, and we all left about the same time; I did not see McLeod among them, either on the expedition, or among our number when we returned. Capt. Drew commanded; his orders were, "The steamboat is our object—follow me."

The next deposition read was that of Capt. Shepard McCormick, which was as follows:

Deposition of Stephen McCormick, Esq., Lieut. in the Royal Navy. The first time I saw Alex. McLeod was on the night of the 28th Dec. 1837, when he was introduced to me by Capt. Graham. I perfectly recollect the destruction of the Caroline. I was at Chippewa about that time and for some days prior to it. The persons who embarked in the expedition were for about half an hour standing on the beach. I was getting the boats ready. I took a list of the names and went round to get volunteers by direction of Capt. Drew, as I was second in command. When the boats went to destroy the Caroline. I do not know where McLeod was; he was not in my boat. I did not take down his name, and am positive he was not of the party. I went with the party on the expedition, and did not see McLeod among us at any time. I did not see him at all that night. I was the second of our party who landed on the Caroline, and was in most parts of her. I was put into one of the boats after I was wounded, before the other assailants left the Caroline. I was so disabled that I cannot recollect who I saw on my return. I saw McLeod shortly after the destruction of the Caroline, and he expressed his regret that he had not heard of it, as he would have accompanied us. Further than this I know of nothing that may tend to the advantage of said A. McLeod.

The next deposition read was that of Frederick Cleverly, who was in the same boat with Beer

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and O'Reilly, as follows:

*Deposition of Cleverly, Esq.—*The first time I saw Alexander McLeod was on the evening of the 28th December, 1837, when he was preparing to accompany Capt. Graham round Navy Island. He remained the quarter part of the night in our quarters. I was present at the embarkation of the expedition against the Caroline. I saw most of them embark. McLeod was not in the boat with me. I have never seen him since the 29th Dec. 1837, when he returned from going round Navy Island with Capt. Graham. I went on board of her, and to most parts of her. I boarded her with the rest, and left her about the same time. I did not see McLeod among them, nor do I believe he was among them when they returned to the Canada shore—nor have I seen him since. The expedition was started by order of Sir A. McNab, who was on the beach when we started. But I heard him give no direction about it. Capt. Drew who commanded, received his order from Sir Allan.

FRIDAY AFTERNOON.

On the resumption of the proceedings after the recess for dinner,

Mr. Spencer said that as the remainder of the depositions contained merely collateral evidence, he proposed to introduce at present the oral testimony.

William Press was then called to the stand, and being sworn, deposes that he lives in Canada; keeps a public house at Niagara; knew McLeod well; had known him a year before the 27th of Dec., '37; remembered the "troubles" in Canada about that period; was at Chippewa only once; that was on the 27th of Dec.; returned to Niagara the same evening; took the passengers in a wagon from Niagara to Chippewa; entered in a cash book the money received for carrying these persons; the date was 29th Dec., 1837; the Caroline was destroyed that night; heard of that event the next morning; put his horses in a yard opposite Davis' Tavern; started from Davis' immediately after dark; O'Keefe rode with witness to Niagara, and McLeod went to Stamford; the latter place is about six miles from Chippewa; the roads were very bad; were at least an hour and a half going to Stamford; McLeod left witness at the gate of Capt. Morrison.

John Morrison was next sworn and deposed as follows:—Resides at Stamford, U. C.; moved there from Toronto; came to Toronto in June 1835; knows Alexander McLeod perfectly; made his acquaintance in '36; heard of the destruction of the Caroline on the morning of the 30th December 1836; heard of it from Col. Cameron, formerly of the regiment witness belonged to; was told by one of his sons that the Colonel wanted him at the gate; went down and saw him there; was asked if he had heard the news, and said no; Col. C. then told him that a party had gone to Schlosser the night before and cut out the Caroline and destroyed her; witness said then "Your friend McLeod is in our house, won't you come up and see him?" he begged to be excused, as he was in a great hurry; Col. C. was in a wagon; he handed witness a piece of wood, saying it was a piece of the Caroline, which witness took to the house and cut from it a piece; kept the piece and returned the larger fragment; was told it was got under the "Falls;" had the colonel good by; from other sources then learned during the day of the destruction of the Caroline; Colonel Cameron served with witness in France, Spain and Portugal under the great Duke of Wellington for 14 years; Mc-

Leod was in the cottage of witness at the time conversation took place; he came there as nearly as witness could remember, at a short time after 7 o'clock on the night before that morning; he slept in the parlor; he drank tea that evening with witness' family; took breakfast in the parlor next morning; McLeod and witness retired to bed nearly at half past 12 o'clock; spent the evening after tea in familiar conversation after taking a tumbler of toddy; McLeod had not left his room before witness saw Col. Cameron next morning; after returning the piece of wood to Cameron, witness went to the cottage; at the threshold of the door saw McLeod half-dressed in the room; repeated to him the intelligence received from Cameron; McLeod said, "You don't say so?" Witness replied Col. Cameron told him so.

By the Court—When did he make that answer?

Just when I said Col. Cameron had said the Caroline had been cut out and sent over the Falls.

Examination continued—McLeod then said, "I wish to God I had been there!" and McLeod continued, "Where is Archie? I want my horse!" Archie went off to get the horse—that was a little past eight—he was pressed not to think of going till he got breakfast, and agreed to remain—he did remain—he then, after being dressed and having breakfast, went down with him and saw him get his horse and ride towards Chippewa—next saw McLeod till the afternoon of the 2d of January following.

Archibald Morrison, son of the last witness, an intelligent looking lad, was then sworn and examined—He deposed that he knew McLeod—had seen Colonel Duncan, Cameron some times—he was in Toronto as witness believed—was at his father's gate when Col. Cameron came up, about 8 o'clock in the morning. Col. C. told me to tell father to come to him. I went up to the house; a gentleman was with Col. C.; they were in a two horse wagon; my father went down, I went down with him; heard them say that the Caroline was burnt; heard Col. C. say that; McLeod was then in the parlor of my father's house; he came there the night before, before tea I think—he went away next morning after breakfast, about 8 o'clock; he went away on horseback.

Mrs. Margaret Morrison was then examined: knows McLeod—has known for six years—remembers hearing of the burning of the Caroline—it was in the morning she heard it—then understood that the boat was burnt the night before—the intelligence was brought by Colonel Cameron—understood that he brought a part of the boat—saw the piece that Mr. Morrison cut off—at the time McLeod was in the parlour—he came there the night before—about seven o'clock—took tea there that night—he stayed all night because Morrison wouldn't allow him to go away that night—Mr. Morrison and McLeod sat up till past 12 o'clock—witness sat up, part of the time being in the room—McLeod and Mr. Morrison took a glass of toddy together—McLeod slept in the parlour—he slept on a "stretcher"—(witness explained this as being a cot,) the parlor was not commonly used as a bed-room—Mr. McLeod's boots were taken from the parlor, before bed-time to be dried at the kitchen fire—they were at the same place in the morning—they were then dry—but were wet the night before—Mr. McLeod did not leave the place that night to the knowledge of witness—could not have done without the knowledge of witness.

By the Court—Saw McLeod for the last time that night about twelve o'clock; the "stretcher"

was made up before the young ladies retired; the young ladies retired about 10 o'clock; saw McLeod next morning about 8 o'clock; had then been up about half an hour; he was in the parlor when Col. Cameron came along; Mr. Morrison then told McLeod what had happened about the Caroline, and McLeod wished he had been there; saw McLeod again in the afternoon of the same day, when he returned from Chippewa, on his way to Niagara; he had a cannon ball in his hand, which was said to have been fired from Navy Island.

Harriet Morrison, daughter of Capt. Morrison, was then sworn and examined.—Is the second daughter of Capt. Morrison.

Mr. Hall—I trust the learned gentleman would let the lady tell her own story.

Mr. Spencer—Examine her yourself, Sir, according to your own notions of propriety. Proceed.

Examination resumed by Spencer—Was at home in 1839—has known McLeod since a year after her father and family came to this country—heard of the affair of the burning of the Caroline on the morning that McLeod was there—on the 29th of Dec.—her father heard of it from Col. Cameron—saw McLeod the night before at tea about seven o'clock—retired between nine and ten—McLeod had not then retired—saw him the next morning at breakfast—he then left the house to go to Chippewa between nine and ten.

Cross examined by Mr. Jenkins—The family usually retired about 10 o'clock—McLeod being there was the cause of part of the family sitting up later than usual—had heard some days before of the Caroline and about her carrying ammunition—is sure heard this before McLeod was there that night—thinks she saw Col. Cameron from her bed room of her mother's room—knew Col. Cameron—had been introduced to him in Niagara by Angus McLeod—that was previous to this time—couldn't say how long previous it was—breakfasted about 8 o'clock that morning—saw McLeod the same day in the afternoon at the gate—he then had a cannon ball in his hand—he was going to Niagara—he was at the house of witness's father the day after New Year's—her brother came home on the forenoon of New Year's day.

By Mr. Spencer—Mr. McLeod was at their house on Christmas Eve, and remained during the night—heard that the Caroline was employed in conveying ammunition to Navy Island, before she heard of her destruction—heard of that two or three days before—can't say from whom she heard this—don't know what the conversation was about between Mr. Morrison and Mr. McLeod that night [recognizes her signature to previous deposition.]

Mr. Spencer at this stage of the proceedings proposed to read the deposition of Colonel Cameron.

Mr. Hall objected to the deposition, as irregular.

Mr. Spencer made some very severe remarks on the alleged conduct of the prosecution in raising technical and unreasonable objections.

Mr. Hall characterized the remarks of Mr. Spencer as unprecedented and ungentlemanly. Perhaps in imputing unworthy motives to the prosecuting officers, was owing to his feeling of what he himself would have done in similar circumstances (a murmur of applause, checked immediately by the court.)

Mr. Spencer then read the deposition which is as follows:—

Deposition of Duncan Cameron, of the township of York, Canada.—Upon the morning after the

destruction of the Caroline, about nine o'clock A. M., in company with Mr. M. C. Miyan, the Presbyterian Minister of St. Thomas, I stopped at Lieutenant Morrison's gate in front of his house, near Stamford, about three or four miles from Chippewa, and Mr. Morrison came down to his gate. I there had a conversation with him for about four minutes. I do not remember every particular subject of conversation, though I may have mentioned to him the destruction of the Caroline, but I could not swear that I did so. I only now remember the fact of having held a conversation with Mr. Morrison at that time.

Cross examination waived.

John McLean sworn—Resides in New York city—is in the city of Washington more than half the year; a few days previous to the burning of the Caroline, was at the American Hotel in Buffalo—there saw McLeod in the bar room; there were a number of persons present; and a conversation ensued in relation to the Canada troubles; McLeod became desirous of retreating from the room for safety; witness and another assisted him to do so; the night of the burning of the Caroline he spent in the quarters of Col. McNab, at Chippewa; got there at about seven o'clock in the evening; did not see Mr. McLeod there. I saw him next morning after leaving McNab's quarters—he left there about 10 o'clock in company with Mr. Foote in a wagon, and near the Pavilion Hotel Mr. McLeod passed witness on horseback going toward the camp.

Jasper P. Gilkinson was next sworn and deposed that he has lived at Niagara since March, 1836; knew Reyncock; he left before the "troubles;" he did not go in any very meritorious way; he went in September or October; was of the force at Chippewa; a volunteer; was in Chippewa on the 29th; lodged about half a mile below Stamford, at a tavern, towards Niagara; returned to Chippewa next morning about 10 o'clock; saw McLeod; he overtook witness and a person who accompanied him; McLeod was on a bay horse; it was between Stamford and the Pavilion; when they got to Chippewa rode along to near Captain Uster's house; two guns were fired from Navy Island at the party; witness suggested the propriety of returning; in returning the lower battery was discharged at us; one shot entered the bank of the river; a soldier of the 24th picked up the ball, and gave it to McLeod; he took it home.

This witness was cross-examined at considerable length by Mr. Hall, but his direct testimony was not shaken in any particular, and the court adjourned till next morning.

SATURDAY, Oct. 9.

The Court met at 8 o'clock, and Mr. Spencer, in continuation of the testimony for the prisoner, stated to the court that he would now offer, if he had not done so before, parole evidence in addition to the documentary, parole evidence to show the state of affairs on the border about the time of the event upon which this prosecution was founded. He then called to the stand

Jared Stocking, who deposed—I am brother to Samuel Stocking, of this city. I reside at Niagara, U. C. In December, 1837, I was stationed at Chippewa, and commanded a regiment of dragoons. I was there on the 29th of that month.—I know the witness Piesse. He resided opposite to me. I saw him at Chippewa the 29th Dec., 1837. He dined with me that day, and I spent the afternoon with him. It was his first appearance at Chippewa. I knew Mr. Reyncock. He was my neighbor. He was a custom house offi-

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Mr. Spencer having the opportunity of characterizing testimony—defence—participated in the court for the purpose of offering money and

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Mr. Spencer here rose and said, that the Court having excluded the testimony first proposed on the opening of the defence—that of a national character—and thereby confined the defence to testimony bearing upon the other branch of the defence—to wit, the absence of McLeod from participation in the destruction of the Caroline, the counsel for the defence had now brought before the Court and jury all the evidence they had to offer in that behalf, and now closed their testimony and rested.

PROSECUTION RESUMED.

Mr. Hall here offered in testimony the enrollment and license under which the Caroline ran, both dated 1st Dec. 1837. He then offered to read the statement made by the prisoner, formally, before Justice Bell, signed by him, in the presence of his counsel Mr. Brady, duly authenticated by the Justice. No objection being made, the statement was read. It was in substance that he went with Capt. Graham round Navy Island, to look out for the Caroline, on the afternoon of the 29th Dec. 1838. Then returned to Davis's tavern went to bed and remained there till 7 or 8 o'clock in the evening, and about 8 o'clock left on horseback for Niagara.

That he rode to Capt. Morrison's that evening, stopped there that night, going to bed about 11 o'clock, and remained there till after breakfast next morning. Before he left Capt. Morrison came to him in the house, and informed him that Col. Cameron had called and told him that they had destroyed a steamboat the previous night. At the Pavilion Hotel he overtook a person whom he named, who informed him of the particulars of the destruction of the steamboat Caroline. He then rode on to Chippewa, arriving there between 9 and 10 A. M.

Mr. Hall then read the testimony of Capt. Morrison, and his son Archibald, taken by Justice Bell, in behalf of McLeod, dated 14th Nov. 1840, at Lewiston.

Mr. H. then read the testimony taken before Justice Bowen, of Niagara county, regularly authenticated. The dates of these documents were the 17th and 24th Dec. 1840. The first document was the examination of the prisoner, stating that on the evening preceding the Christmas before the burning of the Caroline, he was at Buffalo, and there he learned that the Caroline was fitted out to run to Chippewa. The next day he returned to Chippewa, and on arriving at the Pavilion Hotel at Niagara Falls, he was there told the same thing. On arriving at Chippewa he informed Col. McNab of what he had heard. On the morning of the 28th he and Capt. Graham, in a boat with 8 sailors, went round Navy Island, to see if they could see anything of the Caroline. They did not discover her, but in the afternoon he saw her running between Schlosser and Navy Island. Being somewhat unwell he went to bed, got up about 7 o'clock in the evening, and rode to Capt. Morrison's where he spent the night. The next morning he was told by Captain Morrison that Col. Cameron had just informed him that the Caroline was burned the preceding night. He slept alone at Morrison's. He had never told any person he was at the burning of the Caroline, nor did he ever exhibit to any person a pistol with blood on it.

The next document was the testimony of Mrs

Morrison, similar, in substance to the evidence she gave last evening; and in addition, that her daughter Helen had lived with McLeod, but was never married to him. She was however married afterwards to another man.

The next document was the evidence of Felen Morrison, who testified that McLeod was at her father's house on the night the Caroline was burned, and she heard her father tell him next morning of the burning of the Caroline. He was told of it in the parlor before he was wholly dressed. He left the house about 10 A. M. McLeod slept there on Christmas night, and had frequently slept there.

Mr. Hall then proposed to put in evidence indictments against several of the witnesses for the defence, as participants in the burning of the Caroline; but the court deemed such evidence inadmissible.

Mr. Hall then proposed to read the deposition of Russell Inglis, taken under commission, which the counsel for the prisoner had declined to read.

Mr. Spencer objected, but the court admitted it, and it was read.

Russell Inglis, barkeeper of the North American Hotel at Toronto, stated under oath that he knows Alexander McLeod, and he was at that Hotel on the 31st December, 1837, in company with several gentlemen and officers.

Mr. Hall then called to the stand

Rev. John Marsh, who testified as follows:—I am a minister of the gospel of the Methodist persuasion. I was acquainted with the witness Samuel Drown for 4 years in Canada, and never heard aught against his character, nor any thing to discredit his veracity.

Cross examined. I was intimately acquainted with Drown, and for a year, while Drown lived at St. Catharine's, I was in the habit of daily intercourse with him. He was in the employ of my brother and myself part of the time. I never heard his character questioned.

Platt Smith was then called and sworn for the prosecution—I reside in Lockport; in December, 1837, I was in Canada, at Chippewa the most of the time; I recollect the occurrence of the burning of the Caroline.

Mr. Spencer interrupted the witness, and inquired of counsel what they intended to prove by this witness.

Mr. Hawley replied that he intended by this witness to rebut the evidence given on the part of the defence as to the alibi, and to prove that on the night of the burning of the Caroline McLeod was at Chippewa, and not at Morrison's. Also, to sustain the witness named Drown, whose testimony it had been attempted to impeach.

Mr. Spencer denied the right of the prosecution, after resting its testimony to offer accumulative evidence, and on this point an argument of considerable length ensued, in which the counsel for the prisoner quoted from 24th of Common Law Reports, Rex vs. Hildreth, 22d Wendell 225; 2d, Carrington & Paine, 415; and 1 do 219; and Mr. Hawley, for the prosecution read from Cowan & Hill, 735, several pages in which various other authorities were quoted sustaining the right of the prosecution to the evidence proposed.

The result was a decision of the Court against admitting the testimony proposed.

SATURDAY, half past 12 o'clock.

The court remarked that in reply to an argument offered by the last speaker, the court must say that it was bound to exclude and had excluded, all consideration as to what impression its

decisions might make in any portion of the public mind. The court was to decide according to law, and wholly irrespective of the opinion of any.—The court was sorry that any such imputations as those now adverted and repudiated had been made.

The examination of Smith was now proceeded with. Knew Drown; was assisting his (witness') brother when Drown was with him was called up by Drown in the midnight of the burning of the Caroline. [The attorney General then proposed to prove by this witness that he went with Drown, &c. so as to establish the truth of Drown's testimony. Mr. Spencer objected, and cited from 23d Wendell's, the decision of the Superior Court on a similar question. Mr. Hall replied. He held that whatever threw light on the truth and veracity of the witness Drown was evidence. The court.—Then you abandon the point as to Drown's declaration? Mr. Hall.—Yes, at present, but not hereafter. The court excluded the evidence.]

Cross examination resumed.—Never heard anything against Drown's veracity—heard the testimony of Capt. Sears—was at the beacon light between 12 and 1 o'clock—there might have been four boats that came up together, but thinks there were only three—one fell below the cut, and might have went into the mouth of the Chippewa creek—no did not see it come in—persons were continually passing and repassing along the shore—some gave the countersign, and a good many did not—found no difficulty in going to the beacon light—had the countersign, but forgot it before he got to the sentinels—this occurred about one o'clock.

Can you say whether, from anything you know, that Alexander McLeod could not have been at Mr. Morrison's at Stamford that night, between 1 and 2 o'clock that morning?

Mr. Spencer objected.

Mr. Hall was astonished that at that stage of the trial a rigorous rule had been insisted on after such a liberality had been manifested all along in favor of the prisoner. He trusted the court would at once decide that the question was proper.

The Court had already excluded on sufficient grounds questions going to elicit the answer now sought—this evidence was in chief and not in reply, and of course was inadmissible. The Court then put the question thus:—If you can state that McLeod was not there for any other reason than that he was at Chippewa, you may answer—if not, you cannot answer. The court then adjourned for dinner.

TRIAL RESUMED.

SATURDAY, 2 o'clock P. M.

The examination of Platt Smith was continued by Mr. Hall, who asked the witness if any delay had occurred at the disembarkation?

[Mr. Spencer objected.

Mr. Hall—I only intend impeaching the evidence of Sears.

Mr. Spencer.—Go on then.]

Witness.—There was a delay only of a very few minutes, afterwards fell in with this party; they stopped at Davis's house, and some one asked if they should wait for the others; they did not wait; witness was there as long as they stood there; whilst witness was there the party from the other boats did not come up.

Mr. Hall then desired to ascertain from the witness where the prisoner was in the morning.

Mr. Spencer.—Where do you propose to show he was.

Mr. Hall.—At Chippewa.

The Court.—When?

Mr. Hall.—At sunrise; it is not at all cumulative evidence.

The Court.—It is still evidence of the same description, connecting the prisoner with the transaction.

Mr. Hall.—Not independently of the other evidence.

The Court decided the evidence was inadmissible. The rule was laid down in a late case of *Nisi Prius*, Littledale, Judge, the decision in which the Court then read.

Mr. Hall then proposed to ask the witness.—Do you know any place where McLeod was met between 1 and 8 o'clock, on the morning of the 30th Dec, 1837?

The Court remarked that that was substantially the same question as before, and, therefore, inadmissible.

Mr. Hall then proposed to ask:—Do you know that McLeod was not at Morrison's at 8 o'clock, on the morning after the destruction of the Caroline?

The Court observed that, as intended to be, the fact elicited came within the rule, it was not to be got in any such ingenious way as that.

Mr. Hall would then ask—Did you see the prisoner as late as 10 o'clock at Chippewa, or any other place?

The Court denied that this question might be put, as none of the evidence fixed the time of McLeod's arrival at Chippewa, nor where he was at 10 o'clock.

The witness then replied that he did, about 10 o'clock, see McLeod go from Davis's across the bridge down the Chippewa; there might have been one person with McLeod; he was going from the quarters of Col. McNab; saw him on the Sunday following; then saw him very near the guard-house, three quarters of a mile above; it was about 11; I did not know who were with McLeod; cannot say whether it was Mr. Gilkinson—did not recollect seeing McLeod after that—one of the persons was spoken of as being McNab—it was not he—it was a stranger to witness—he rode on a white horse.

John C. Davis was then sworn, and deposed that he resides at Chippewa—is the proprietor of "Davis' tavern" there—was there when the Caroline was burnt—recollects that time—was then at home—recollects distinctly the transaction—knows the prisoner at the bar—he usually stopped at witness' house when in Chippewa.

Mr. Hall then proposed to ask the witness.—Did you on the following morning see the prisoner?

Mr. Spencer objected, and the Court excluded the question.

Witness retired to bed after twelve o'clock—was at the upper end of the cut when the expedition was returning—avoided seeing the party—went home—went into the kitchen—couldn't say that he retired to bed before or after the party returned—done so shortly after his return—didn't see Mr. Sears at all after he returned—is confident of that—a number of the officers staid at witness's house—witness's room was immediately adjoining the officers' room—and could hear in it the voices of persons in the room—officers were there that night—imagined that he recognized voices there that night—it was too nice a point to come up to to say positively about that—there was a good deal of loud talking there—did not see any of the party that night drinking except one—there was

shed took out of his house that night, and there some talk about that—waked about sunrise—hefore he got out of bed saw some person. Who?

Mr. Spencer objected.

The Court overruled the question for the reasons already stated.

Hall—Do you know Mr. Parkes?

Spencer objected.

The Court admitted the question.

Witness—The prisoner went to bed in my house that afternoon—he got up in the evening—saw him about 8 or 9 o'clock—he ordered his horse then and said he was going to Niagara—a gentleman came in and asked for him afterwards—it was Mr. Press.

Philo Smith was then called and sworn—He deposed that he resided at Chippewa when the Caroline was burnt—recollects that occurrence—was there part of the next day—was there about 8 o'clock the next day—knew McLeod well.

Mr. Spencer—What do you purpose to do?

Mr. Jenkins—Does that come within the rule?

The Court—Yes.

Mr. Jenkins continued—Are you acquainted with Samuel Drown? Yes. What's his character for veracity? Never heard it questioned.

Mr. Spencer—Did Drown run away? Well, no I believe not. How did he get away? On account of some mob or other. Do you belong to a secret lodge? No. Ever did? Well, I once attended one two years ago. That's all, &c.

James H. Dyke sworn—I reside at Niagara Falls on the American side, and know the prisoner; did not see him on the 30th of Dec.; saw him the morning after the patriots left the island; saw him in Stamford; he was hitching a horse before a wagon; didn't know what horse; can't say it was Capt. Morrison's.

The Court said it did not see how the Attorney General could go on to contradict the statement of the prisoner which he (the Attorney General) had himself put in.

The witness then proceeded in reply to interrogatories—told McLeod the fun was over—that the patriots had left the island.

Timothy Wheaton was then called and sworn, the counsel for the prisoner having stated his objection to his evidence, inasmuch as he was one of the witnesses called before the prosecution rested and did not appear, and there was no provision that his testimony should be admitted at any subsequent period of the trial.

The witness deposed that he resided in Canada in '38—recollects being then in the town of Niagara—saw the prisoner there—conversed with him—was standing near the ferry, passed the time of day with McLeod, and said that "the poor fellows (meaning the sentinels) had a hard time of it"—conversed about the difficulties in Canada before that, and then asked him how many of the Navy Islanders had been killed on the Canada shore—he replied two, if witness rightly remembered—then conversed of the members on the island—didn't know that he said how many were there—but he said they never would have the Caroline to assist them again if they got on to the island—witness then said he understood she had been destroyed, and the prisoner said she had—he said he was the second or third man that boarded her—he was going on to say that he came near being killed—then some man came up, and McLeod witness thinks said, "Hold on a moment, Herron!"—that's all the conversation had with McLeod, for he started off then—had never seen McLeod before—lived then at Whitby about 65 miles from

Niagara.

Wm. Defield was then sworn and examined—He deposed that he knew Capt. Morrison; had been three times at his house; saw him once at Lewiston in November, 1840; when he and his family were examined before Mr. Bell; in September, 1839, heard him say that he hoped the American authorities would get McLeod and punish him for participation in burning the Caroline; heard him say the same thing at his own house; the reason that Capt. Morrison assigned for so saying was that McLeod had seduced his daughter who was married to a Mr. Taylor.

Mr. Hall then called Daniel Baxter, Thomas Fanning and one or two others, but they did not appear.

John C. Shubbrick was then called for the purpose of proving that there was no fire-arms on board the Caroline and to impeach the evidence of the prisoner's witnesses, who swore to the contrary.

Court—It is already proved that they were unarmed. Mr. Spencer, is it part of your case that the attacking party were fired on?

Mr. Spencer—No, your honor; I object however in addition that this is cumulative evidence—They attempt now to produce new evidence—The learned gentleman continued that the case for the prosecution had been shrouded in gloom contrary to all precedent.

Mr. Jenkins—Did the learned gentleman not give the Editor of the "Observer" a list of the witnesses for the prosecution?

Mr. Spencer—I took the names in pencil as they were called by the clerk on the first day?

Mr. Hall contended that it would not have been prudent at one time to disclose the witnesses. But subsequently in the spirit of liberality, the names were given in exchange for those of the prisoner's witnesses. And it was extraordinary that a counsel, after entrapping him (Mr. Hall) should discover so little of the generosity and magnanimity constituting a gentleman.

Mr. Spencer said that Mr. Wood gave merely names without residences as subjects of their testimony, and very few of them had been produced on the trial.

The Court hoped the asceritings exhibited by gentlemen would all be smoothed down before another week, and wished to know Mr. Hall's object in producing this witness.

Mr. Hall—To prove the fact of their being unfurnished on board the Caroline.

The Court excluded the evidence as cumulative.

Mr. Spencer here read the deposition of the witness Defield, taken before the Justice. In this document Defield stated that he had never conversed with Captain Morrison on the subject of the destruction of the Caroline till the evening before the deposition was taken; and that Morrison said he was not certain that McLeod was at his house the night the Caroline was burnt.

Dr. Hamilton was then called by Mr. Spencer, and being sworn deposed—that he had known Defield since he was a boy; his reputation was not good; witness is a citizen of the same village with Defield; witness knows Captain Morrison his reputation is good.

By the court—Is sufficiently acquainted with the persons associating with Capt. Morrison so as know his reputation and standing.

Defield was a sergeant in the militia; he was not appointed as a lieutenant; saw him on duty as sergeant before he deserted to Navy

Isen—knows that from affidavits—not from personal knowledge of course, as he didn't follow him—sit as is a brother of the late Sheriff Hamilton—prisoner was his deputy—does not know that he prisoner is liable to any civil or criminal suits growing out of that connection. Did not know anything of the prisoner's being called on by Sheriff Hamilton to disavow connection with the deceased party in Canada.

By Mr. Spencer—I am president of a bank, and in that way negotiated bills for Capt. Morrison—Capt. Morrison has been perfectly sober since he was at Lewiston as a witness—he was intoxicated then—has not been so since to witness's knowledge.

John McConber was then called by Mr. Hall, and deposed that he knew Samuel Brown—he has an unexceptionable character for truth and veracity.

Joseph Center was then recalled and deposed—was the agent who attended the execution of the Canadian Commissioners—was present at the taking of Harris' evidence—he was prompted by the Commissioners—didn't recollect more than one instance—that was in reference to the number of persons on the bank—and one of the Commissioners stated on that point what had been stated by a former witness—no direct reference was made, however—the Commissioners refused to take down the witness's answer to the 13th cross interrogatory—as to what part he had taken in the destruction of the Caroline—he said he was the last man left her—that he set her on fire—throwing two "cackuses" into her—the witness refused to have his first answer recorded, and the Commissioners refused to put it in their minutes.

Mr. Hall then proposed to show by this witness that the conduct of the Commissioners had been irregular in some points.

The Court said if so Mr. Hall could take matter before the Supreme Court by motion to set aside the depositions—and the evidence of this witness on that point was altogether irrelevant.

Andrew Robinson was then called by Mr. Hall, for the purpose of testifying as to the character of Desfield; knew him for a number of years; never knew any thing against his truth or veracity.

Cross-examined by Mr. Spencer—is the person who preferred this complaint against McLeod; had Desfield summoned to testify against Morrison; might have told some one to go and talk to Morrison; don't recollect.

The Court—Mr. Spencer, have you any other evidence?

Mr. Spencer—No, your Honor.

The Court then admonished the Jury of their duty during the Sabbath, when, unpleasant as it was, they must remain together.

Mr. Mott, one of the Jurors, was allowed by counsel or counsel to visit, under charge of a constable, a brother lying at point of death.

Another Juror asked the privilege of absence in the same way, which was denied, as no such case for his separation existed as in the other case.

Another Juror asked if they could go to meeting?

Court—Yes, certainly; you must go in a body, sit together, and be attended by a constable.

A constable was then sworn to attend Mr. Mott during his temporary separation from his fellow-jurors. The other members of the jury were then given in charge of two constables, and retired—The prisoner and jailer, the bench, members of the bar, and last not least the numerous corps of

Reporters, followed in regular order, and so the Court adjourned till Monday morning.

Monday, October 12.

THE SUMMING UP.

MR. SPENCER addressed the court and Jury as follows: May it please your Honor, and Gentlemen of the Jury, for the first time in my life that I have ever arisen having in charge an important trial or defence. I can say that I feel that the discharge of my duty after the term my has been closed, is entirely a work of supererogation. And the consciousness that it is so, really oppresses me—it seems to enervate my whole system—and I really feel most embarrassed under the circumstances which surround me, and impel me to detain a Jury whose patience has been already largely drawn upon, by commenting on evidence when in my deliberate judgment that evidence has already convinced the understanding of the Jury, and that their judgment is now ripe to be pronounced. Still, in all this I may be mistaken. It is very possible that my convictions of the innocence of McLeod are stronger than are those of all or any other individual who may not have been so intimately acquainted with the whole history of the case as I have been. It is because I have no right to remit any exertions that may tend to the development of truth—the establishment of the innocence of McLeod—and the securing a verdict of acquittal, that I now propose to trespass on your patience, and submit to you such considerations as seem to be worthy of being reflected on by you—such as the case calls for—such as the prisoner has a right to demand—and such as our State and common country may reasonably expect.

As I took occasion, gentlemen, to remark in opening the case, and as the evidence has now fully disclosed it is one of greater importance than any other ever brought before an American bar for trial. A trial involving the life of an individual is at all times of sufficient interest to awaken the deepest emotions of the human heart; but we must consider this trial as involving other interests, lying beyond the life or death of Alexander McLeod, and which need only be referred to to awaken deep emotions in every American heart that throbs in an American bosom.

On you, gentlemen, after all that is to be said by counsel shall have been uttered, and after the delivery of his Honor's charge, will devolve three great and responsible duties. On you rests finally the whole question, and to you alone will the country look for a proper disposal of it. Your duty, until you come to a final determination, is that of patient and attentive hearing—of an effort rightly to understand all that can be said, and particularly to appreciate all that may have been proved. Patience and attention are your first duties, and afterwards a careful, deliberate, anxious, conscientious consideration of what has been submitted to you; and after you shall have retired for deliberation, then will come the time when the full sense of the great responsibility of your position will devolve upon you.

Our duty, as counsel, is of a different—altogether different character—more perplexing, more exciting, more vexatious, more trying, save perhaps, when compeared with yours in finally pronouncing a verdict. I allude to this consideration, gentlemen, only because on account of some things which have occurred in the progress of the trial, and which I would have rejoiced to have seen avoided. It is very natural, it is very pro-

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per, that counsel on either side should feel much in reference to the cause which has been committed to their charge. It is fit and proper that the learned counsel who have conducted the prosecution for the People should feel anxious for the triumph of justice. It is natural too, that they should believe the truth of the case that they have spread out before the jury. It is natural that they should disbelieve the case of the prisoner. On the other hand you will agree with me that it is equally natural and proper that the counsel for the accused who have devoted such attention to his case as their duty required, should have formed some opinion as to its merits, and entertained convictions of the innocence of their client. And that both counsel should act on their convictions was natural, and that they should believe their respective sides of the case to be the truth. And such being the case, the only alternative for counsel was to disbelieve the opposite side of the case—he must believe it entirely untrue, if not entirely false. Hence it will have been observed in the progress of this trial, that there has been some little excitement more, possibly, than was necessary, on the part of counsel. But I hope, gentlemen of the jury, that you will be spared all your lives long from witnessing any such painful occasion for excited feelings as has been manifested on this trial. You may well wish always to remain strangers to the antipathies of counsel while preparing for a trial of this description. You need never desire to become acquainted with the sleepless nights and anxious days which precede the commencement of a trial like this. I can assure you the discovery would afford you anything but pleasure, unless your pain were counterbalanced by the satisfaction resulting from the consciousness of being instrumental in advancing the cause of innocence and justice. You may have observed also that in the progress of the trial, that in the examination of witnesses there may have seemed a want of kindness and charity toward those who have been called to sustain this prosecution—that there may have been a rigor of examination to which witnesses should not be subjected, after having been forced by the mandate of the law to appear and testify. The witness very properly received sympathy from a jury. To that we do not object, and when witnesses seem to be treated with unkindness—with asperity—even with rudeness—it is very natural that the sympathies of the jury should be excited in their behalf, and that the prejudices of the jury should be roused against the counsel who thus roughly handle them, and transcend the limits of their duty. If any such sentiments, gentlemen, have been originated in your minds, I ask that you will find the counsel's apology in the extraordinary case in which he has been engaged, and which is submitted to your consideration; and that you will have less sympathy for the witnesses who have come here to swear away the prisoner's life, than you would have for witnesses in their circumstances and on a different occasion.

It is natural, gentlemen, too, that the counsel for the prosecution should indulge in a firm belief on the one hand of the truth of his own case, and the reverse of ours. But I, on the other hand, may as properly and reasonably entertain a disbelief of the case of my learned adversary. Both cases cannot be true—both cannot stand—in the grapple here for mastery one or the other is to be overthrown—and your verdict is to declare who is to fall and who is to stand triumphant—which is to

be overthrown—and which is to remain firm as the Rock of Ages—so Truth itself. That's the point. And it is natural I should feel warmly and in earnest, believing our case to be the truth—and the case for the prosecution to be not only untrue, which implies only mistake or misapprehension—but, I am sorry to say, utterly false. And I desire you, gentlemen of the jury, to understand that word in its legitimate and strongest acceptation.

I believe that this prosecution has been sought to be upheld by a combination of the rankest perjury ever brought into a court of justice, since the sun shone on Christendom—in a case, too, involving not only the life of an individual, but the interests of the two great nations in two hemispheres, that hold the highest rank in the map of the world—two nations bound by the strongest ties—inhabited by races speaking the same language—one common people—kin and kin. I do not shrink from saying that the sole object of this prosecution has been to involve these countries in a bloody war, and believing that, I confess I have felt but little charity for the witnesses brought to sustain it, and my conduct has doubtless manifested as little tenderness as I felt. This, gentlemen of the jury, is my apology.

The learned gentleman then referred to the decision of the Supreme Court, which had excluded the questions arising out of the principles of international law, as applicable to the defense of the prisoner. By that decision the learned Judge who now presided over their deliberations had declared himself to be bound.

Of this decision, Mr. Spencer did not complain, nor was it unequipped by him. He was well acquainted with his Honor, and with the uniform deference with which he at all times regarded the decisions of the Supreme Court.

But though thus deprived of the ground of defense, they were not without defence on another ground. In the correctness of the decision of the Supreme Court he had no belief; and as a member of the bar and an American citizen, he protested against it, as contrary to the law of nations, and to the laws of reason; and he regretted it had ever been put forth as the opinion of the Supreme Court of this State on affairs growing out of the intercourse of nations. To that opinion, however, he should, for the purposes of this trial, pay all due deference and respect. Should the result of this trial, however, render it necessary, he should before another tribunal, as he uniformly does elsewhere, strongly and decidedly oppose that opinion, and have it reviewed, and, he doubted not, reversed.

Mr. Spencer then passed to the other branch of the defence—the proof as to the participation of McLeod in the Caroline expedition, and of his absence from it. Before entering upon a review of that proof, Mr. Spencer adverted to the fact, that as long ago as an entire year, the whole testimony for the defence was within the knowledge of the prosecuting counsel and the world; while with him and his learned associates, all was darkness and night, not only what was the proof to be brought to uphold the prosecution, or who were to be the witnesses;—which witness had long enjoyed the advantage of communication with each other, and with the prosecuting counsel. And he moreover believed that these witness had been congregating together in committee rooms and there canvassing their own testimony and the testimony and depositions to be brought before the court and jury in support of the defence. In these proceedings, however, Mr. Spencer did not believe

the Attorney General or either of the learned gentlemen associated with him, had any participation.

But if any within the sound of his voice supposed that the four learned counsel who appeared here on the part of the prosecution, constitute all the legal gentlemen who had applied their talents and energies to the preparation and support of the prosecution, he would tell that individual he was woefully mistaken. Able as are the gentlemen opposed, before this court, they constituted but a corporal's guard to the whole array that has been engaged in this labor—the object of which array was not for the furtherance of justice as between McLeod and the people, or the taking of the life of McLeod individually, as to the fomentation of disturbances and the promotion of a war between this country and Great Britain. If proof was wanted of the existence of this legal combination, it could be found abundantly in the number of witnesses that had been brought forward to swear away the life of McLeod, who had sprung up like fibres, from where nobody knew, or how collected nobody could explain. Time and again had this charge been examined by magistrates at the west, and amongst the whole array of thirty witnesses for the prosecution, scarce any of them appeared originally as witnesses against McLeod at those examinations. These facts alone, did no others exist, sufficiently indicated the extent of combination which had been brought to bear in support of this prosecution—aided by secret societies and combinations, with contributions of money, personal services, food, raiment, and other necessities that could be found required. Most, if not all the witnesses for the prosecution belonged to these societies, and deserved not credit in the estimation of any intelligent jury or of any reasonable man.

Mr. Spencer then proceeded to a review of the testimony, passing over, at a glance, those who testified only as to the particulars of the destruction of the *Caroline*. These witnesses, Mr. Spencer contended, were at least interested at heart for the success of this prosecution, and he dwelt with great severity upon the reluctance with which the witness Wells was compelled, on his cross-examination, to admit facts which he assiduously sought to conceal. But even the testimony of these witnesses, and of Mr. Wells in particular, Mr. Spencer contended, was not entitled to the slightest belief.

Mr. Spencer then proceeded to examine the testimony in order to connect the prisoner with the murder of Duffee; and he passed in scrutinizing review, and with most ingenious and able criticism those witnesses and their testimony in the order in which they were called by the attorney general. The whole mass of their testimony, in all its material points, the learned gentleman pronounced, and endeavored to convince the jury, was a continuous detail of perjury upon perjury—interspersed only with an occasional truth—few and far between, to give their falsehoods credence with the jury. In reference to that part of the testimony of the witness Parke, relative to the boastful assertions of McLeod as to the fatal agency he had in the burning of the *Caroline*, and the murder of Duffee, Mr. Spencer attributed all the knowledge or belief of Parke as to such boasts to what he had read in the newspapers, and falsely brought in his testimony as so much truth known of his own personal knowledge. As to those boastful assertions, Mr. Spencer declared, on the authority of McLeod, had never been made by the

prisoner, and the publications of such declarations had at all times been a matter of perfect surprise to McLeod. As the counsel of the prisoner, he had uniformly advised him, and, indeed, had been obliged to order him, not to reply to and refute those publications while a prisoner awaiting trial; but to leave its refutation to the developments of the trial.

Mr. Spencer was still proceeding with his examination of the testimony, when the court adjourned to dinner.

TWO O'CLOCK, P. M.

The court room, on the re-assembling of the court after dinner, was densely thronged with spectators, nearly half of whom were ladies, who presented a splendid array of "youth, beauty and fashion," and who paid great attention to the display of eloquence, the anticipation of which had attracted them to the court room.

After a few preliminary remarks, Mr. Spencer resumed his criticism of the testimony and the witnesses for the prosecution, with whom and with which he dealt with the most unsparing severity. In the course of his remarks upon the character of the witnesses and their testimony, Mr. Spencer introduced a withering rebuke of the "insurgents" and "patriots" engaged in fomenting the border troubles—some of which he directed particularly to certain participants in those troubles here present and within the scope of his sight—(to wit: Mr. McKenzie, Dr. Theller, and Gen. Sutherland.)

After expressing his full confidence in the jury and his satisfaction that to the central county of the great State of New York should belong the honor of freeing an innocent man from the fangs of an iniquitous conspiracy, and complimenting his colleagues, the learned gentleman proceeded to comment on the evidence for the defence. He contended that he had amply demonstrated by that evidence where McLeod was not, and, secondly, where he was on that eventful night. The result which he arrived at, and which as he deemed, the jury must inevitably arrive at, was, that all the testimony which went to show that McLeod was either in the expedition against the *Caroline*, or at Chippewa on that night, was not only false, but wilfully false, and that the testimony which proved McLeod was on that night miles from Chippewa and at the house of Captain Morrison, was the only testimony to that point was the true testimony—the only testimony entitled to the credence of the jury—and upon which they were bound to find a verdict of acquittal.

TUESDAY, October 12.

MR. HALL then commenced his summing up as follows:—Gentlemen of the Jury, I am now called upon to ask you to bear up against the eloquence of the learned counsel for the prisoner, exhausted as you are by this trial of an unprecedented length—to bear up and struggle against the false issues and extraneous considerations which the ingenuity of the counsel have laid before you. During the progress of this cause, and in summing it up, the counsel have loudly complained of the manner in which the prosecution has been conducted, as if there had been something improper in the conduct of those whose duty it has been to conduct it.

We have been accused of concealing the names of our witnesses from the opposite counsel. Gentlemen, I do not feel that that charge bears against myself—for one, I can say it does not apply to me. And I can fearlessly assert that in the whole conduct of this prosecution there has been

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nothing to tarnish the good name of the State of N. York, or her administration of justice, by any harsh or unnecessary act of restriction or concealment. A degree of liberality unprecedented in cases of indictment for the crime of murder, has been extended to the prisoner who is now before you. It was desired, above all things, that in this prosecution, in which we had resolved to vindicate the justice of our criminal administration, all should be done in tenderness and charity, and not in malice.

It has been said, gentlemen, that there have been committee rooms, and that there the depositions taken in Canada have been read to the witnesses in order that they might shape their stories in accordance with that testimony. Gentlemen believe it not. I do not believe it. It has not been so. If any such thing has been done, it has been done without my knowledge, and if I can use the expression—contrary to my knowledge. But this much I can say, that the statements of every witness examined before you on the part of the prosecution, have been known long before they came here, and before the commissions were returned, and so far from having been exaggerated, they have been found amply confirmed.—What ground then is there for the assertion, that these witnesses have been tampered with—that a story has been made up—that there is some mysterious power acting behind the curtain, and driving forward this prosecution. Gentlemen, believe it is not so. The same heated brain—the same excited imagination which conjured up a conspiracy to blow up a court house and assassinate a judge who admitted the prisoner to bail, and all those extravagant and monstrous creations which have agitated the public mind, has now given birth to the assertion that our witnesses have been drilled. Gentlemen, allow me to say one word more on this point. I mean not to censure the counsel who has conducted the defense of the prisoner—far be that from me. These gentlemen have been placed in a situation most painfully responsible—they have nobly exerted themselves—they have done their utmost—they have done nobly—had they done less I should despise them as being recreant from their duty. I pardon with the utmost frankness faults which arise from an excessive zeal in a discharge of duty.

And may I ask you, gentlemen, that if you have discovered that I have exceeded my duty, and pushed any points beyond what was right and proper, you will believe me when I now say that I so acted because I believed I was then doing no more than my duty demanded.

One word more, gentlemen, before I pass to the merits of the case. Something has been said about a mob at Lockport, and to this I would not advert if it were not in some measure connected with the honor of the people of this state. For it has been spread abroad that we are so wild and regardless of law and justice that we are ready to assassinate a Judge on the Bench. I stand not here to apologise for the violence exhibited at Lockport—far from it. It was wrong; but the whole history of it was this—the prisoner was admitted to bail by the Judge of that county in violation of, perhaps all precedent. The people, who were somewhat indignant as may readily be supposed, at the outrage thus committed on their very shores—the very threshold of their dwellings—and in sight of the mangled bodies of their neighbors, naturally felt somewhat excited; and what did they do? They committed violence on no one, but they insisted that those

who had given the bail should cancel their bonds. They were cancelled, and there the matter ended.

The learned gentlemen then ridiculed the air of confidence which the senior counsel of the prisoner had exhibited in his address to the jury; and referred to the summary manner in which his learned adversary had disposed of the witnesses for the prosecution. He (Mr H.) however, hoped that the jury would at least admit that the Caroline had been burned, and that Amos Durfee had been murdered.

Mr. H. then went on to speak of the brutality of the act, for participation in which the prisoner was arraigned, and quoted a passage from the decision of the Supreme Court, showing that no justification could be offered for the atrocity of the transaction. The destruction of the Caroline might have been an act of sagacious policy, but it was undoubtedly a deed of barbarous cruelty.—The jury had been appealed to in behalf of the perpetrators in a manner which might possibly affect some minds. It had been asked if this country were invaded, would not its citizens repel the invasion with equal promptitude and decision? He (Mr. H.) believed that it would, but certainly his countryman would have never done it in the night. Mr. H. then referred to the manner in which the question of international law, as absorbing the actors in the destruction of the Caroline from individual responsibility, had been disposed of by the Supreme Court, and which rendered it unnecessary for the jury to embarrass their minds with that view of the case.

As it was now near 10 o'clock, the Court deemed it proper to adjourn till next morning.

TUESDAY MORNING, OCT. 11.

On the opening of the court this morning, Mr. Hall resumed his address to the jury, passing directly to an examination of the case as presented in the testimony. The first branch of the case were the events which immediately preceded the burning of the Caroline, and the conduct of the prisoner at Buffalo a very few days before, and on the day immediately preceding—his expedition around Navy Island to discover the Caroline—the consultation he had with McNab on the subject on his return—his retiring to bed after that consultation; to refresh himself and recruit for the adventure of the night. All these facts, proved by respectable witnesses, and admitted by the prisoner, Mr. Hall contended, went almost conclusively to show that he did not abandon the enterprise after his consultation with McNab—but, on the contrary, remained and aided the expedition, heart and hand, to its fatal consummation. He then reverted, in support of this conclusion, to the testimony of Capt Appleby, who testified that in his belief—a belief which struck him at that moment and has ever since remained unshaken in his mind, that it was McLEOD himself who, when he was attempting to escape through the cabin door, thrust at him with his sword, and who was prevented, only by the intervention of a metal button, from inflicting upon him a dreadful, if not a mortal wound.

From this evidence Mr. Hall passed to the consideration of the testimony of the eight witnesses who had sworn some of them to having seen the prisoner at Chippewa on the tragical night, or on the following morning by sunrise—some both—and others who had heard him make boasts of having taken an active and fatal part in the enterprise. And in his review of this portion of the testimony, Mr. Hall introduced a most eloquent

and powerful vindication of these witnesses from the sweeping, all-inclusive allegation of continuous, unmitigated perjury, brought against them by the learned counsel for the prisoner. Taking the testimony of each of them consecutively, Mr. Hall proceeded to sit and compare them with each other, and argue to the jury their perfect consistency with probabilities and established facts. In relation to the attempts made by counsel opposed to him to impeach by testimony the characters of a few of the witnesses for the prosecution, Mr. Hall explained that the first intimation he or his associates had of any intention to introduce impeaching witnesses against the witnesses Drown and Quimby, was their production on the stand. Hence the impossibility, on the part of the prosecution, to be prepared with witnesses to vindicate the characters of those impeached; and it was just and proper the jury should know the fact, lest they might imagine the reason of the non-production of such witnesses was that witnesses could not be found who would sustain these witnesses from impeachment. Such was not the fact.

It has been said in the course of this trial, continued Mr. Hall, that the declarations of a prisoner are not always the best evidence. But let us see how far this objection is applicable to this case. We find by the testimony of the witnesses, that the prisoners did not select for audiences to hear his boasts of participation in the destruction of the Caroline, and his immediate personal agency in the murder of Darfee, listeners in obscure places far removed from the vicinity of the occurrences, who could have no opportunity of knowing whether his boasts were true or false. Such is the selection which an empty braggadocio makes of his audiences—is compelled to make—to avoid the immediate detection of his fallacy, and consequent exposure and contempt. But how different was the selection of the prisoner. In public assemblages at Chippewa, where all who composed the expedition were, on the morning—and but a few hours—after the events had occurred, and in the very midst of those who were, and whom he knew were, a portion and an important portion of the expedition, he made these boasts. And was he contradicted by any of the numerous listeners to his boasts, who knew with positive knowledge whether those boasts were truly made or false? No. Not a man raised his voice against the full and entire truth of these boasts, and thus each made himself a witness to the truth of the declarations then and there made by the prisoner.

Mr. Hall then proceeded to review the remaining testimony he had laid before the jury in support of the prosecution, to argue to them its consistency, and establish its claims to their reliance and belief.

Mr. Hall then passed to the examination and explanation of the defence—its nature and character as an *alibi*, and the testimony which had been introduced to sustain it. He explained to the jury the manner of obtaining commissions for the purpose of taking foreign evidence; and the perfect impunity with which those whose testimony had thus been obtained, could swear to just what they please, without fear of accountability to our laws for perjury, which could not reach them. Having before them both the direct and cross interrogatories, before required to answer the former, they could frame their replies so as to evade any disclosures they might wish to keep from the light; and, under this state of facts, Mr. Hall contended these depositions were entitled to no more weight

or consideration with the jury than the mere assertion of so many interested persons, unbound by the solemnities of an oath. In addition to this, Mr. Hall proceeded to point out to the jury the contradictions, evasions, and inconsistencies contained in those depositions, as compared with each other, with the oral testimony adduced for the defence, and the established and admitted facts in the case.

In his criticism of the deposition of McNab, which, as he attempted to show to the jury and so contended, impeached itself in various points, Mr. Hall introduced a most withering sarcasm upon his conduct in the matter of the Caroline, and his consequent reward of the honors of knighthood. In former times, remarked the learned counsel, the honors of knighthood were conferred upon brave men for noble and chivalrous deeds; and some emblems, indicative of the nature of the deed by which they obtained that honor, was emblazoned on his escutcheon. But McNab was honored with knighthood for no such deed. He won his honors by the base and cowardly burning of the Caroline, and the murder of an innocent, unoffending, peaceable citizen of the United States. And even the credit of active personal participation in that base act does not belong to him. No, he was entirely too careful of his precious health to venture it in that brave enterprise. When, continued Mr. Hall, McNab emblazons the emblems of his honors on his escutcheon, let it be no honorable token—no, not even the bloody hand; but let it be the blazing torch of the midnight incendiary!

Before the arrival of the times in which by its gross abuse, the order of knighthood ceased to be an honor, those who had achieved that honor were accustomed to swear an oath, and to swear it by their knighthood. But, gentlemen, when I first read this celebrated deposition of the Knight McNab the conviction fastened upon my mind that he was swearing by his knighthood.

Mr. Hall then resumed his examination of McNab's affidavit, and those which followed it, and contended that neither they, nor any of them, were entitled to weight or credit with the jury.

More than any other one point contained in these depositions, did the declarations of resistance on the part of those on board the Caroline astonish him. They were so wholesale and groundless, that they forcibly brought back to his recollection what Sterne put into the mouth of my Uncle Toby—

"Our army swore TERRIBLY in Flanders!"

But gentlemen, they swore a great deal harder in Canada.

After reviewing this mass of documentary evidence, Mr. Hall contended that it fell far short of relieving the jury—indeed, it did not begin to relieve them—of the duty, the necessity, of finding a verdict of conviction.

Mr. Hall then passed on to the consideration of the testimony of the Morrison family, produced to sustain the *alibi* set up for the defence, and the collateral evidence adduced to corroborate what was sworn to in that behalf by that family. In reference to the testimony of the Morrions, he cautioned the jury that they will consider, in weighing that testimony, the known and but too successful influence which McLeod had obtained over that family, and every member of it. His connection with that family—illegitimate though it may be—one of the daughters living with him as his wife, and making that house her home—

was a circumstance which he considered him to Morrison counsel had this enquiry could set on before had he Niagara Falls. This, according to attempt. W his route, and In reference Hall, after to the conclusion not say perjury it all, and let at their hour destruction of altogether d have been a them, as to the night of the just as easily taken as to December.

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was a circumstance which was well entitled to the consideration of the jury. Besides, what took him to Morrison's house that night? The learned counsel had waited in vain for an explanation of this enquiry, either from the witnesses or the counsel on the part of the prisoner. Twice before had he made unsuccessful attempts to reach Niagara Falls for the transaction of business—This, according to his own showing, was his third attempt. Why did he alter his purpose, turn off his route, and go to Morrison's at Stamford?

In reference to the Morrison testimony, Mr. Hall, after an able and fair examination came to the conclusion that *mistake of the night*, he would not say perjury, for he did not think so, perverted it all, and led them to swear to events as occurring at their house on the night and morning of the destruction of the Caroline, the occurrences of an altogether different occasion. They are proved to have been all mistaken as to the facts sworn to by them, as to the prisoner being at their home on the night of the 21 January following; and they can just as easily, and are equally liable to be, mistaken as to his being there on the night of the 29th December.

In reference to the testimony of the witnesses McLean, Storking, and others, which went to corroborate the testimony showing the absence of McLeod from Chippewa, on the 29th December, Mr. Hall argued, with great ingenuity and force, and contended to the jury, that it may have all been honestly given, though mistaken in point of time and point of circumstance in some respects, and in others might be true, and still not inconsistent with the return of the prisoner to Chippewa, the same night, even though he did, as contended, leave that place at 5 or 6 in the evening in the wagon of the witness Presse.

In his comments upon the deposition of Col. Cameron, Mr. Hall introduced some collateral circumstances as being in his evidence.

Mr. Spencer interrupted him to correct him.—Nothing of the kind is contained in Mr. Cameron's deposition.

Mr. Hall—I think it is in his deposition, or at least in some portion or other of the testimony.—At any rate, you stated the circumstance in your opening.

Mr. Spencer—No, sir, I made mention of no such thing in my opening. You will find it correctly reported in *The Sun*, and I am willing to stand or fall by it as you find it there published.

Without further dispute Mr. Hall waived the question, and proceeded with his discussion of the testimony of the witnesses.

After disposing of this, Mr. Hall passed to the voluntary statement made by the prisoner before Judge Bell, and his depositions before Judge Bowen.—In these the learned gentleman pointed out many contradictions to the direct testimony of his own witnesses, many incongruities and inconsistencies with each other, and which were in direct contravention to the facts proved by the cloud of witnesses who had appeared on the part of the people.

From these, Mr. Hall passed to a general review of the case, as presented in the single point to which it now stood reduced—have *ten men* combined and entered into a combination, constructed a story to swear away the life of a man by direct, systematic and damning perjury, or, rather, are not Capt. Morrison and his wife *mistaken* in their recollection of the night which the prisoner passed at their house? No rational mind could hesitate upon a decision. It was a thing impossi-

ble, utterly impossible, that ten men could frame and carry into effect such a conspiracy, without the searching, all-penetrating scrutiny of the learned counsel of the prisoner tearing their conspiracy to atoms, and exposing their perjured falsity to the day's light, even from its first conception to its full fruition.

After a few and exceedingly eloquent remarks, urging upon the jury a fair, unbiased, and a fearless discharge of the great and important duty, the consummation of which was now all that was left for their performance, Mr. Hall took his leave of them, with his heartfelt thanks for the patience, attention, and assiduity they had manifested throughout this laborious and protracted trial.

The Court, without commencing its charge, here, at half past twelve, adjourned for one hour.

TUESDAY, TWO O'CLOCK.

As it was known that Judge Griseley would charge the Jury this afternoon, the Court House was crowded with anxious auditors, a large proportion of them being ladies, who presented an ample display of beauty and intelligence, many of them being fair enough to excite one sigh when we reflected that in all probability we would never again look on their lovely faces.

At a few minutes after two o'clock Judge GRIDLEY rose and delivered the following

CHARGE.

Gentlemen of the Jury.—I congratulate you on your at length arriving at the present stage of this long-protracted trial. After your patience having been drawn upon for six days in listening to the trial, and a day and a half in hearing the arguments of counsel, you have at last arrived at that period where you are called on to discharge the last and deeply solemn duty which devolves upon you. I congratulate you also upon the auspicious circumstances under which you approach the performance of this duty. We know it is true that a deep and fervid interest is felt in this case throughout the entire land. We are also aware that a portion of the public press has, from the commencement of this controversy, teemed with inflammatory and passionate articles. We have likewise heard of popular commotions in various parts of the country where the indictment against the prisoner was found. Still though these disturbing influences may prevail elsewhere, we can at least say that they have not entered the solemn temple of justice. If the waves of excited popular feeling have swept along in other quarters, they have not reached the portals of this building, consecrated as it is to the faithful administration of that justice to which the people and the prisoner alike appeal. During the proceedings here, it may also be remarked, we have seen at active auditors in the persons of loyal subjects of Great Britain, who, not long since, were in arms in defence of their soil, and, on the other hand, we had the presence of more than one distinguished actor in the scenes of blood and suffering connected with the recent abortive attempt at revolution in the Canadian provinces, yet, although these individuals as well as others who have been present, must have been deeply interested andators and spectators of what has occurred, not a single murmur has been heard—not a single ebullition of excited feeling has escaped. All has been quietness and good order, and a signal proof has been given that here is a spot where justice can be purely administered, and that here, if no where else, the decision of an upright, intelligent, and honest jury will be acknowledged sovereign and supreme. It is under these

suspicious circumstances that I invite your attention, gentlemen, to the questions connected with this great and important case.

Allow me to offer a single additional passing remark, and it is this—in order to appreciate properly the questions on which you are to pronounce your judgment, it will be necessary that you should keep your minds entirely unembarrassed by the consideration of other matters which have in reality nothing whatever to do with the merits of the case. The counsel on one side and the other, as it was their duty and right, have presented such arguments and discussed such topics as they deemed likely to serve the interests of the parties whom they represent. But the tribunal which tries has also duties to perform, altogether different from those incumbent on the advocates entrusted with the interests of those who are placed at its bar. The case of this prisoner, gentlemen, I may simply say, is to be tried like that of any other person indicted for the same offence.

The first question is—has any murder been committed?—and the second question is—is prisoner at the bar, guilty of that murder?

On the first question, gentlemen, the Supreme Court of this State, as you have already learned, during the progress of the trial, have passed. Their authority is binding on you and me. We are sitting here to dispense justice in the Circuit Court, and must be governed by the decision of that superior tribunal, which has sent down this issue to be tried here. That then is no longer an open question, but an adjudicated one, and with it you have no concern.

The circumstances out of which this indictment originated are briefly these:—In Dec. 1837 a body of Canadian refugees and American citizens occupied Navy Island—fortified themselves there and opened a cannonade upon the Canadian main shore, where some 2500 or 3000 men were assembled to protect their territory. Aid was offered to these occupants of Navy Island by certain individuals in Buffalo; and one William Wells, the owner of the steamboat Caroline, for the purpose of promoting his own interests, as he swears before you, had the steamboat cut out from the ice where it lay in Buffalo Creek, and on the morning of the 29th of Dec.—the fatal day—that boat made her first trip from Buffalo to Schlosser, touching at Navy Island; and that after that, on the same day, she made two trips to Navy Island from Schlosser—that it was instrumental in carrying armed men—arms—provisions—and one piece of ordnance to Navy Island.

Farther than this it does not appear that the Caroline was instrumental in promoting the interests of the occupants of Navy Island. Now the colonial authorities in Canada saw fit to regard this boat as a portion of the armament of the insurgents, and resolved to destroy her. Sir Allan McNab the commander of the Provincial forces at Chippewa ordered volunteers to embark in boats, of which five reached the Caroline and from them she was boarded, whilst her peaceful occupants were asleep in her berths, and with cutlasses, boarding-pikes and fire-arms the attacked party chased the persons on board, wounding some, killing one, and whether others experienced the same fate we know not—and then having set fire to the boat the attacking party sent her over the "Falls."

This is a brief history of the transaction so far as it is necessary for you to consider it for the purpose of understanding and deposing of this case. The acts I have described are held by the prisoner's counsel to have been excused in the in-

dividual performing them for the reason, first, because these acts were authorized, and secondly, because done in self-defence, and again because the whole transaction has already become the subject of negotiation between the two governments, so as to deprive this court of jurisdiction over the offence. These arguments have been laid before the Supreme Court, and that court after great research and deliberate consideration, pronounced that this act of the killing of Durfee, although performed in the prosecution of an enterprise like that I have already described, was murder, and it follows then, gentlemen, that all who were engaged in it are guilty of the same offence, and it is not necessary that the arm of McLeod should have struck the fatal blow, to render him guilty. Enough that he was engaged with others in that enterprise. This question then is to be excluded from your consideration. It has it is true been dwelt on by counsel on both sides in their opening addresses, and during the progress of the trial. I refer to it however to inform you that it has been already adjudicated on and is set at rest.

Then comes the question, the important question on which you are to pass—is Alexander McLeod guilty of that murder. The Counsel for the People, have presented many witnesses before you, the tendency of whose testimony has been to show that the prisoner is guilty, and in order, gentlemen, that you may understand and appreciate this testimony, I shall briefly piece it review before you. I shall divide it into two classes—the first branch embracing the direct and circumstantial evidence, other than that arising from confessions connecting the prisoner with this charge—the second class of evidence will consist entirely of confessions.

The first witness, gentlemen, who has testified before you is Gilman Appleby. He is the only witness who was on board of the boat at the time of the attack. He was the captain of the boat—he slept in the gentlemen's cabin—he was awake a little before midnight, as he thinks by information that there were boats approaching—he arose and partially dressed, made his way up the stairs till he found his farther progress arrested—he retreated, but again returned, and had opened the door about a foot when it was violently pushed open by some one outside, who then made a plunge at him with a sword, which glanced along two of his vest buttons and struck against the metal button of his pantaloons—he was considerably excited, but in that momentary glance he saw the features of the man thus attacking him, and his impression then was that the individual was Alexander McLeod; but with all commendable prudence and caution—for which I honor him—this witness says that amid the agitation of that moment, and in that hasty glance which passed in the twinkling of an eye, he cannot say that it was McLeod. He had once before seen the prisoner in Buffalo, and it struck him at the time that his appearance was similar to that of the individual who thrust at him, but it was only one hurried glance, and he immediately replied to the question of counsel when on the stand here, that he could not say that it was Alexander McLeod.

The next witness is Samuel Drown. He resided at Chippewa, and was engaged in tending bar for one Smith who kept a tavern there—and he says that he went up on the evening of this transaction to what is called the "Cut," and up the Niagara river—that he was at the entrance of this "cut"—that he was at the beacon-light—

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saw the boats passing into the “Cut”—and then he thinks he recognised M Leod amongst the party embarking in the boats—it was dark—but the witness expressed the certainty of his belief that he then and there saw the prisoner. He says he went from there to Davis' tavern, where a portion of these persons came, and there by a light which shone from within the bar-room—or by a light out on the wharf, although he cannot remember any light hanging out there—he professes to have seen there again Alexander McLeod. He then says that the next morning, gentlemen, between daylight and sunrise, he heard some of the men in the tavern talking of McLeod's being wounded, and was over on the opposite stoop—the witness looked across, he said, and then thought he again recognised McLeod. He says he went over to see whether McLeod was wounded—he saw no one apparently wounded, and did not see him. He was then inquired of in relation to the degree of certainty with which he could say that the man whom he saw was McLeod—and he said in reply that “he saw a man whom he called McLeod. Another question was put to him, and he then said “I mean that I am sure that it was M'Leod, as that he now sits before me.” This is, gentlemen, his testimony. He submitted to a long cross-examination; and how far it went to shake your confidence in his statements, it is your province, gentlemen to decide. There is, however, one consideration which I will submit to you. It is this, that when you are to judge of the credit to be attached to the testimony of a witness, it is right and proper that you should observe his manner on the stand—the degree of intelligence which he exhibits—the amount of powers of observation and accuracy of recollection—and having done so you are to decide whether his answers satisfy you that he is honest, and on the whole whether his statements are of such a character, when taken all in all, that you can rely upon them—and if not sufficient to satisfy you altogether, you must decide in how far you should allow what degree of confidence you must repose in his testimony, and that you will bestow on it and no more. It is argued by the prisoner's counsel that the degree of darkness which prevailed then, and is testified to, was such as made it exceedingly rash for this witness to pronounce so confidently that he was able to recognize McLeod as well there as here to-day. It is also argued that he stands before you impeached as to his character for truth and veracity. And to sustain this impeachment witnesses have been called and have appeared before you, and testified that he lives near the residence of this witness, and he says that he heard him speaking on this subject I think at some former period, when subpoenaed, and among other things he said he knew nothing in reference to this matter that could do McLeod any harm or any good. The statement which he makes of what he said is somewhat qualified. It is remarked on the other hand that witnesses who are subpoenaed frequently make careless observations, and that this person being a poor man, might wish to avoid attendance on this trial. This is very true that persons often make careless remarks, and had Drown made such a statement in presence of any one who could have excused him from attending here, then the plea of counsel would have been entitled to greater regard from you. If, in truth the facts which he has here stated were remembered by him at that time, then they were all facts material, and he could not have said consistently with truth that he knew

nothing of sufficient importance to harm or benefit the prisoner. This, gentlemen, is the extent of that individual's testimony. You are to take it into your consideration, and are to exercise your judgment in reference to the effect it may have in detracting from your confidence in the evidence of Drown. I may add that in order to restore your confidence in Drown, Bates was questioned, and in reply stated that that individual's character for veracity had latterly improved—that formerly he had been an intemperate man; but was now reformed.

The next witness, gentlemen, is Isaac P. Carson. He is a native of this State—a carpenter by trade—he had been at Chippewa in prosecution of his business—he testifies that he was at Macklin's store on the afternoon of the 29th of December, 1837—that he there saw Mogin, Usher and the prisoner passing out of Davis'—that he also saw him next morning at sunrise with others, on the “stoop”—that he was at some little distance—that he could see only his head and shoulders—that he was telling of his exploit s, and saying that he had killed a d-d yankee—that he saw him again two or three days afterwards—that he then said he would like to be on another such expedition, and burn Buffalo. This is an analysis of this witness's testimony, which is spread over several pages of my minutes. You will recollect, gentlemen, this witness's cross examination, and will judge how far that weakened the force of the statements made by him on his direct examination. There is, however, one point that demands your particular attention. This witness was inquired of as to who else were present when he heard McLeod flourishing and boasting of having killed a yankee. At first the witness could not recollect any one; at length he said he could name one Caswell. He was then asked whether he was present at this trial, and he said yes. He was then asked when it first occurred to him that he saw Caswell there that morning, and he confessed that it was that very moment. The cross-examination was protracted, and in the course of it, it came out that he had conversed with Caswell as late as the morning of the day on which he testified on the stand before you; that they talked of the affair of the Caroline, and that Caswell informed him that he was there that morning. It may be that that was all true, and that it really did not occur to him that Caswell was there, till the moment the question was put to him. But you are to judge of that.

The next witness is Charles Parkes, bar-keeper at Davis' Tavern—he testifies that the prisoner went to bed at Davis' tavern early in the day and got up between 8 and 9 o'clock in the evening—that a gentleman called for him and he went out—that half an hour or three-quarters of an hour afterwards he saw him between Davis' and the Chippewa creek—that a good many people were on the road—that McLeod went into one of the boats—that at about sunrise next morning he saw him at Davis'—that he again saw him a few days afterwards in the officer's mess-room, and there heard him say that he had killed a d-d Yankee—or something like that—at the close of his examination this witness was asked whether he could say with considerable certainty that he saw McLeod at the “cut,” and he said he could—he was asked further and said he had no doubt of it—he also states that it was pretty dark that night—and testifies also to other things, on account of which the counsel for the prisoner contends you should take his testimony with considerable grains

of allowance—he testifies as to his knowledge of McLeod—and among other things says that he once went to see him in company with a brother-in-law whom he accompanied as a witness in case his evidence were necessary—that money was paid to McLeod—but although he went as a witness he cannot recollect the amount of the money paid on the occasion. It is also argued that this witness tells a very extraordinary story in relation to the manner in which he has been induced to appear here—that he started from home to make certain purchases in Buffalo—that he suspected some one who accosted him on the way with the design of arresting him to ensure his attendance as a witness on this trial—that he returned home—again set out and was arrested in Buffalo before he had time to transact any business—that further he was ignorant of the laws of this State, and was so frightened by the alleged representations of Mr. Hawley that he (Mr. H.) had power to enforce his attendance here, that he consented to come. All this may or may not be the truth. This witness also testifies that he was solicited to come here by persons religiously opposed to bearing arms. Now, gentlemen, I have no opinion to express on these matters. You are the sole judges of this testimony, and with you I leave it.

The next witness is Caswell—he whom Corson spoke of, and he testifies in substance that he also saw McLeod that morning at Davis' tavern.

Then comes Quimby—he is the witness from Pennsylvania—he testifies that he resided some 2 miles from Chippewa; that he was there on the 29th with a load of hay, which he sold to the Government; that he did not get paid for it at the time of the sale; that he remained till evening; and in the course of the evening saw the prisoner at Davis' tavern; that he remained there from 9 till 10 o'clock; that he then started for home; stopped at Pettus' about a mile off all night; that he then turned back and was again in Chippewa between daylight and sunrise; that he went back to get payment for his hay at the Commissary's office; that he was going there when he saw McLeod; that he saw him on the "ridge," and that he there heard him boast of his exploits on the Caroline, and heard him declare that there was the blood of a Yankee on his sleeve. He is questioned then as to whether he expected to receive payment for his hay at that early hour, and whether there were any persons in the office, and he said there was not; that he wished to be there in good season; but did not after all get paid, and finally went home.

But, gentlemen, it seems according to the testimony of Mr. Lott, of Lottsville, Pa., that on one occasion this Quimby came with another person for the purpose of making an affidavit before Mr. Lott, who is a magistrate, and that that gentleman refused to take the affidavit, because Quimby was unworthy of credit—that he went to another magistrate by whom the affidavit was taken and sent on. Lott says that he resides in Lottsville—that the reputation of the witness Quimby while resident there was very bad—that he was not to be believed on oath—and that in informing the prisoner's counsel of his character, he (Mr. L.) had no private motives of revenge or malice to gratify. Now it is said, and it is true, that ordinarily a witness to invalidate the testimony of another, should be called from the neighborhood. But you are the arbiters of this question, and in your hands I leave it.

The evidence of Seth Hunman for whatever it is worth, is also before you. When examined be-

fore he said McLeod was not seen by him that morning—he now says that he was. You will give this the credit you deem it deserves.

Justice F. T. Stevens is then called and sworn. He testifies that he was present on the night in question, and that he saw three boats go out and return—and he distinctly and positively swears that he saw McLeod disembark at the beaconlight. That is a statement which is not corroborated by other witness, and is on the contrary hostile to the statements of all the other witnesses on both sides. It can not be true. He was dismissed from the stand without cross-examination. He has testified to a deliberate falsehood—a falsehood for which the palliating plea of the probability of mistake cannot be offered.

Leonard Anon is the next witness. He swears that he saw McLeod at the bar in Davis' tavern—that there were others there who took part in the expedition against the Caroline, each boasting as to who had committed the greatest crime—that there he saw McLeod draw out his pistol and declare that he had killed a d—d Yankee, and that he pointed out the blood on the stock of the pistol. This, it is contended on the part of the prisoner is an improbable story—that he could not have seen the blood on the pistol. And other considerations have been submitted to you in relation to the testimony of this individual which it is unnecessary for me to dwell upon now. You are the judges of their weight and the attention which should be given them.

These are I believe the only witnesses belonging to the first class of evidence against the prisoner. That is, these are the only witnesses who testify of their own knowledge as to facts unalloyed with confessions, which go to connect McLeod with this enterprise. And the prisoner's counsel contends that some of these witnesses have been impeached, and that others have appeared in very doubtful circumstances—that the darkness of the night was a good reason why no very great confidence should be placed in the statements of those testifying so positively that they recognized McLeod with such certainty. And that what they have thus proved is enough to throw some shade of suspicion on the whole. That is the view taken of it by the prisoner's counsel.

Whilst on the other hand the counsel for the prosecution insist that it is a mass of testimony which you must believe and which believing you cannot doubt the fact of the prisoner's guilt. It is your province to criticise all this and pass upon it.

The other branch of the evidence is that contained in the confessions of the prisoner; and there is a principle of law applicable to that description of evidence, to which the counsel for the prisoner has directed your attention—that confessions are in themselves the most suspicious kinds of evidence—easily fabricated—and difficult to be disproved—liable to be mistaken—partially heard—partially remembered—and, unless corroborated by other testimony, the rule adopted by the elementary writers, and sanctioned by the most distinguished jurists, is, that they are the most unsafe description of testimony. Nevertheless, they are competent to be weighed, judged of, and passed upon like all the other evidence in the case. I therefore, gentlemen, call your attention to the evidence of

Henry Myers; and I would admonish you that one rule by which you are to test the declarations of witnesses, is, that you are to see whether

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The last is that on one occasion whilst he was passing Niagara Falls he stopped at a tavern and saw McLeod with a number of others—that McLeod was accosted by name by another of the party—that he boasted that he had killed one d—d Yankee, or rebel—and that he compelled the witness to "treat" the party. You will judge of the credibility of this witness's story; but there is one thing he said which has not been noticed by any of the counsel, and what may aid you in passing judgment on his evidence—he said that he marked the features of McLeod well, as he determined to use him in a similar manner, if ever he got him on this side of the frontier.

The next witness is Calvin Wilson. He is the keeper of a ferry at Youngstown, in Canada, and he says that a few days after the destruction of the *Caroline*, he went over to Canada—went into a house where was a person of the name of Rayncock, McLeod and others whom he named, who had been actors in that transaction, and that McLeod said one of the d—d rebels got shot on the wharf. This witness has been cross examined at length, and confessed that though a poor man with a family, he had given \$200 to the "patriot" cause, and declined answering whether or not he had harbored the notorious Lott. To rebut his testimony a respectable inhabitant of the town of Niagara, named Hamilton, was produced and testified that he well knew Rayncock, and that that individual was absent in England at the time specified by Wilson.

The next witness worthy of notice is Timothy Wheaton. He was called by permission after prosecution rested, the Attorney General supposing that there had been a reservation in favor of this witness. He deposes that about a year before he had gone from Whitby, Canada, where he lived, to Niagara—was near the ferry—saw McLeod coming up from the water side, and the witness remarked to him that the sentinels had a hard time of it—that they then talked of the Navy Islanders—and about their number, that McLeod said they never would have the *Caroline* there again, and added that he was the second or third man who boarded her, that then some person a stranger to witness interrupted the conversation by taking McLeod off—that he (the witness) turned from the ferry recollecting he had not a pass and went back to the town. Gentlemen you are carefully to examine this evidence and decide accordingly to your conscientious conviction of the truth as it really is. If you believe this evidence, notwithstanding some objections to it—and notwithstanding some deductions which are to be made—if you believe that it does after all present to you an amount of evidence which is sufficient to call up the prisoner to answer—then you are to take into consideration the defence opened before you. And it is undeniable that in looking at this mass of evidence there is much that appears questionable, and much of it remains that is not powerfully attacked, and that does bear very hard on the question of the prisoner's guilt. But passing from this you are then to look, at the prisoner's side, because it is the right of every man put on trial here to present his witnesses—have them examined, and if he succeed in establishing a defence, to have the full benefit of it.

That defence, gentlemen, is what is called an *alibi*. It is, in other words, that he had no part or lot, no sort of participation in this enterprise. And this, after the disposal of the first question already

passed upon, is the only other ground of defence that exists. And in my judgment no degree of suspicion should attach to it as an original defence, because it is as I just said, the only defence that remains for the prisoner at the bar. If he were in truth upon that expedition, then is he guilty, and so you must pronounce him. But, gentlemen, if he was at that time 5 or 6 or 7 miles distant, if he had no participation in that enterprise, then the same great principles of justice require that you should pronounce him innocent.

The evidence sustaining this defence consists of the depositions of individuals avowedly participating the expedition, and secondly of the oral testimony of several individuals knowing, or tending to show, that McLeod was, during the execution of this enterprise at a distant spot, in another town.

First, then, with regard to the evidence of the commissions. The prisoner's counsel is right in telling you that evidence taken in this way, is, and should be less satisfactory than that given personally before you. But so far as the depositions themselves go to describe the individuals testifying, you may desire some information respecting the standing and character of those individuals. Some of them are lawyears—some of them mariners—and some officers in her Majesty's service, and by their descriptions they should all be men of character and responsibility.

It has been said that this commission was a "roving commission"—that witnesses were examined whose names had not been returned.—But there was in the spirit of liberality, and by consent, a stipulation made that more witnesses than those named might be examined. It was also hinted that some suspicion should attach to these depositions from the manner in which they had been made up. [The learned judge here described the manner in which the commissions were executed, and showed that no suspicion could properly rest upon them. He then proceeded.] The Attorney General has noticed the testimony of these deponents with great minuteness, and equally great ability. He has pointed out where the witnesses have contradicted each other or the truth. For instance, some saying that resistance was made on board the board, whereas it has been shown that there was no resistance. If the witnesses swore so knowing that they were swearing falsely, that will of course detract from their credibility. But Wells himself testifies that he heard overhead the sounds of fighting, and that in the darkness of the night and confusion of the *melee*, the attacking party had mistaken each other for the occupants of the boat, and that they fought together. If that were true, then it would not follow that in testifying as to resistance encountered on board the boat, they were not false in the corrupt sense of the term.

Passing from this, there is this other consideration, which must strike you in the outset. If when Alexander McLeod sued out this commission, and directed the commissioners to examine persons who had been in each of the boats, and if in truth he had been present there himself, he must be a bold man indeed. Because he must have supposed that the commissioners would either have taken only those who could not see in the dark whether he was there or not, or that the men would have been so corrupt as to swear falsely to extricate him from the punishment of his crime. But this is no further evidence than as it is a portion of the history of the transaction,

and with these views you are to take up the testimony and ascertain, after solemn inquiry, how much credit you should give these witnesses.

It is undoubtedly true, gentlemen, that Sears cannot say with any degree of certainty, that McLeod was not on board the expedition. It is equally true that McNab cannot say so, although he superintended the embarkation of the persons engaged in the enterprise. None but the All-seeing eye could penetrate the darkness that shrouded those there associated. But, then, there are one or two gentlemen, from among inmates of each particular boat, who have been examined. Some of them knew McLeod well before that time—others became acquainted with him afterwards—some talked with and recognised all their associates—and they all testified that McLeod was not amongst them on that night. Now, gentlemen, it is proper that you should apply the rule distinguishing between positive and negative testimony. It is true that where one man swears he did see another at any particular spot and period, it is more satisfactory than when he can only say that the other was not there. But you will take into consideration the reasons which would lead you to believe that the crews of each of the boats must have well known each other, and so form a correct opinion as to their credibility when they say positively that McLeod was not amongst them. With this remark, I leave in your hands this portion of the prisoner's defence.

We come now to the proof of an *alibi*, which if sustained, can leave no doubt of the prisoner's innocence, unless you can believe him gifted with ubiquity.

The first witness to prove this is William Press. He avers that he conveyed the prisoner and another person to Niagara on the day of the destruction of the *Caroline*—that he knows it to be that day from the fact of having made an entry of the transaction in his cash book under that date—that he conveyed the prisoner in the evening as far as Stamford on the way back to Chippewa—that there prisoner alighted from the wagon, and went to the house of Capt. John Morrison.

William Stocking was called and corroborated the evidence of Press, and both, I may add, corroborate the statement of Hamilton respecting Reyncock's having left for Europe before the commencement of the troubles in Canada.

The family of Captain Morrison and himself swear positively as to McLeod's being there on the night of the 29th Dec. Captain Morrison states that he is enabled to fix the day from the circumstance that his friend, Col. Cameron, called at his gate early next morning, and informed him of the destruction of the *Caroline*, and gave him a fragment of her ruins, which he had found in an eddy below the Falls—that he told this to McLeod, whom he found half dressed in the parlor, where he had slept during the night—that McLeod was electrified, and calling for his horse, proposed to leave immediately, but finally remained for breakfast—after which he went on his way.

Then comes the witness Gilkinson, that he met McLeod on the day after the destruction of the *Caroline*, on the road from Stamford—that they were up together to opposite Navy Island, from which they were fired on—that one of the balls was picked up and handed to McLeod, who carried it with him—and Sears, you will recollect, states that on this day he saw McLeod and another person riding along that way, and that they were fired at from Navy Island. This testimony

is also corroborated by that of Mr. McLean.

This is the aggregate of the testimony, gentlemen, on this part of the defence. The evidence of the Morrisons and the declaration of McLeod on his examination have been submitted to you and criticised by the Attorney General with great ability. If he has satisfied you that the Morrisons may have been mistaken as to dates, and in particular in reference to this great epoch, and that the other witnesses corroborating them may have also been mistaken, then your confidence in this portion of the testimony vanishes. But if you decide on just grounds otherwise, then it should I think be deemed satisfactory in establishing the innocence of the prisoner.

(Mr. Spencer then requested the Court to charge the jury that the deposition of Col. Cameron corroborated essentially the statement of Captain Morrison, which his Honor did and proceeded.)

But gentlemen, if even after all, though the prisoner may in your opinion have failed completely in proving an *alibi*, yet if he have raised sufficient doubt as to his guilt, he is to have the full benefit of that doubt. The law never divides between the living and the dead—never consigns any individual to the tomb without an overwhelming amount of evidence to prove the guilt of the accused. In this spirit you are now to consider the evidence which I have fully reviewed before you.

And now gentlemen, my task is performed. Your duty remains to be done. And it is one of the most solemn trusts that can be reposed in the citizen. You are to take this case into your deliberate consideration. You are to weigh and decide on every part and portion of it. You are to call into exercise your best powers of judgment—regardless of rumors which may have reached your ears—regardless of every consideration except that of the guiding principle of justice and impartiality. And when you shall have come to your decision—and declared where the truth lies, then, with an independence that will honor you, and with the noble integrity that your country expects you to exhibit, you will pronounce your verdict. And then I trust that all who have witnessed this trial—the ability with which it has been conducted—and your patience in attending to it—will be satisfied.

If the evidence will lead you to say that he is guilty then, although your decision should wrap your country in the flames of war, you will fearlessly pronounce it—on the other hand if he be innocent you will so pronounce him, regardless of threats or murmurs or fear of rebuke—and may the God of truth enable you to decide according to those principles of truth and equity which are the foundations of the Eternal Throne.

CONCLUSION.

At about four o'clock, P. M., his Honor concluded, and the case was then given to the Jury, who retired under charge of the Constables, whilst the Court proceeded to the despatch of other business.

In twenty minutes the Jury returned to the Court House.

"Have you agreed upon a verdict, Gentlemen of the Jury?" asked the Clerk.

"We have," replied the Foreman.

"What say you, gentlemen, do you find Alexander McLeod guilty or not guilty?"

"NOT GUILTY."

All was hushed and quiet—no excitement visible any where. The prisoner's keen grey eyes brightened up somewhat, and taking his hat and cloak, he slowly retired with his counsel.

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